

THE  
PANDECTES OF  
the law of Nations:  
CONTAYNING  
seuerall discourses of the questi-  
ons, points, and matters of Law, wherein  
the Nations of the world doe  
consent and accord.

*Giuing great light to the vnderstanding  
and opening of the principall obiects, que-  
stions, rules, and cases of the Ciuill Law,  
and Common law of this Realme  
of England.*

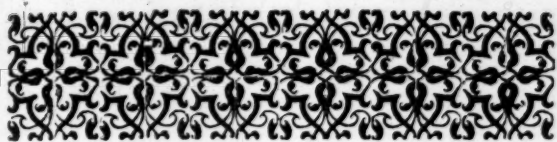
Compiled by WILLIAM FVLBECKE.

*Opinionum commenta delet dies : Nationum iudicia  
confirmat.*




L O N D O N  
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## To the curteous Reader.

urteous Reader, when Sulpitius returning out of Asla, sailed from Aegina to Megara, he began to cast his eye, and bend his contemplation to the regions round about him: behind him was Aegina, before him Megara, on the right hand Piræus, on the left hand Corinth, which had bene in ancient time verie flourishing Cities, but were now ruinated, prostrated, and buried in dust: that wise Romane whose eye did alwaies ayme at some conuenient marke, and whose mind made perfect vse of her selected obiect, when he saw these carcasses of townes, considered his owne estate, which was far more brittle. I likewise wandring in my thoughts through the paradise of learning, amongst many delightfull apparitions espied foure excellent lawes: the first was the canon-law, to which for the grauity I bowed: the second the Ciuil, which for the wisdom I admired: the third the Common law, to which I did my homage: the fourth the law of Nations, which I submissively reuerenced, yet the hew and state of her seemed to bee much chaunged, and the iniquitie of crabbed times had set the print of her metamorphosis vppon

## The Epistle

her: Her other three sisters did condole with her, and deplore the iniurie of the times which did cause her craziness. I perceiuing this, waied mine owne frailtie, which in one and this very spring tide haue in my selfe knowne the force of seasons, and to the glorie of God acknowledged it: I had no meanes of comfort wherewith to refresh this drooping Ladie, but onely with a plaine English mantle to attire her, and recommend her vnto thee. She will report many things vnto thee of the renowned Assyrians, the valiant Persians, the spirit-guided Hebrewes, the prudent Grecians, the admirable Romanes, the noble harted Carthaginians, the victorious Macedonians, the deliberatiue Turkes, the politike Italians, the chiuallrous French, the most puissant & inuictis Romano Marte Britannis, <sup>a</sup> she will manifest vnto thee their iudgements, their censures, their aduises, and practises:

a) Tibul.  
4. Elegi. 1.

Et quæ mox imitere scias: nec desinet vnquam  
Tecum Graia loqui, tecum Romana vetustas:  
Antiquos audito duces: assuesse futuræ  
Militiæ: Latium retrò te confer in æuū. <sup>b</sup>

b) Claudi, de  
quart. Consul.  
lat. Honor.

I commit this booke gentle reader to thy curtesie: it is the first to my knowledge that hath bin written of this matter: if my paines be not correspondent to the dignitie of the subiect, the pardon I yesh in the benefoence of thy curtesie: Euerie one cannot be a Scipio, or a Lælius, to ouertake euerie thing which they undertake: euerie one cannot say as one of them said: Sapiētis non est dicere, non putaram. Appelles could but only describe the head and face of Venus: Achilles

## to the Reader.

les killed many Troianes, could not surprise their citie: and Virgill before he commeth to the death and tombe of Æneas, sayeth, and slipperth into the description of the death and tombe of a Gnat. Perfection is a rare birde, which flieth from many, that with swearing and breathing follow it. Yet some handle that, which they can not gripe, and their endeavour is not disliked. Some make a bolde attempt, and fayle of the victorie, whose audacie is accompted a vertue: Some in not despairing of that they purposed, haue been thanked for their hope. For mine owne part I craue no thanks, but good woordes, and good will, and thy fauourable acceptance (friendly Reader). which being an effectuall benefite may perfit all imperfections. Farewell in the Lord. March 30. Anno Domini 1602.

Thine in all kind respect

WILLIAM FVLBECK.

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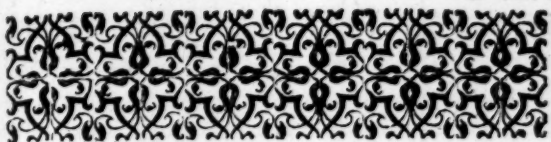
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Of



## The first Chapter.

### *Of the differences of times and seasons by the Law of Nations.*

**A**L Nations in putting difference betwixt times and seasons haue rather followed a populer and common obseruation, then the precise rules and principles of Astronomy, accompting it more conuenient and requisite, that sithence all contracts and matters of entercourse doe fall within the listes and precincts of time, that therefore the moments and measures of time should be publikely and familiarly knowne to populer conceit: In setting downe the definition of Time, they agree in the substance and matter it selfe, though in wordes and tearmes they be somewhat dissonant. *Aristotle* a great Philosopher amongst the *Gracians* defineth Time to be the *measure of motion*, according to *prioritie and posterioritie*, a

B short

## 11051 The first Chapter.

short and subtile definition, but yet true & sound. Varro as great and famous amongst the *Romanes* defineth it to be *interuallum mundi & motus*, the space of the world and motion, a briefe definition and verie nimble, if it be nimbly vnderstood: for by the world he meaneth the course of time, by motion the course of things. Others, as the *Egyptians* haue defined it a *dimension perceyued by the conuersion of the heauens*. Plato, who of these matters had in his trauayle conference with *Arabians*, *Egyptians*, and *Chaldeans*, defineth it to be a moueable and chaungeable representation of Eternitie; <sup>c</sup> and truely and aptly doth he tearme it a chaungeable representation or image of Eternitie: for as *Censorinus* noteth, *Time in regarde of Eternitie, is but a winters day*. <sup>d</sup> But though time be as much obscured in eternitie, as a small penny is amongst the riches of *Crasus*, yet as that was part of his riches, so time must needes be a part of Eternitie. *Cicero* defineth time more vulgarly, *to be a part of Eternitie with a certaine difference, of a yearely, monethly, daily, and nightly distance*, <sup>e</sup> so that *Plato* his definition hath relation to the cause of time; *Ciceroes* to the persons that make vse of time. *Philosophers* haue left to posteritie many subtile, deepe, and learned discourses of time, but bidding their definitions and disputations farewell, I will examine and weye the distinct partes of time with a popular ballance, and according to common sence, taking that course to be most sutable

c) Plat. in  
Tim.

d) Censo. c.4.  
de di. na.

e) Cic. lib. de  
fin. 4.

## The first Chapter.

2

sutable to my profession. The partes of time according to the generall diuision of Nations are a yeare, a moneth, a day, an howre, and a moment: for the *Olympiads* and *Lustra*, as being proper to the *Gracians* and *Romanes* must be seclued from this Treatise, and *Seculum* as being a thing not vsuall in law, which now we handle must likewise be cassierd. Yet in speaking of time we may not forget to handle the circumstances of time as they be accommodated to the Law, and to the actions of men: As namely of a long time, a short time, a late time, an auncient time, a certaine time, an vncertaine time, a continuall time, a conuenient time, time past, time present, and time future. But first to speake of the yeare, *Annus* according to the Etymologic learnedly searched out by *Varro*, is nothing els but a circuit: for as the little circles are called *annuli*, ringes; so the great circles or compasses of time are called *Anni*, yeares<sup>r</sup>. The yeare is a time, wherein the Sunne perfitteth his course, and that is accomplished in the space of three hundred, three scoore, and fiue dayes, and sixe howres almost: And this hath our Law well obserued, as may appeare by these verses:

*Tercentum, ter viginti, cum quinque diebus,*

*Sex horas, neque plus integer annus habet.*

by which accompt ( if you subtraect the howres and halfe dayes ) the quarter of the yeare will fall out as it is in our Law set downe, to be nintie and

f) Var. lib. 5.  
de lingu. lat.

g) 18. Elizab.  
345. Dyer.

95/17  
44

B 2

one

## The first Chapter.

one dayes; and the halfe yeare, a hundred eightie and two dayes, <sup>h</sup> which was almost fully signified by *Ianius* his image in *Rome*, in whose right hand was the number of three hundred, and in his left hand fiftie and foue. <sup>i</sup> Others haue made the same difference betwixt the yeare and moneth which the Merchants of some Countries make betwixt the ounce and the pound, deliuering their conceit in this verse:

*Vnciaq; in libra pars est, qua mensis in anno.*

And though it be a common receiued opinion, that the *Romanes* at the first, and a long time after the foundation of their Citie did accompt but tenne monethes for the yeare, so that *Ouid* quarrel-  
leth with *Romulus* his Astronomy in this maner: <sup>k</sup>

*Scilicet arma magis quam sydera Romule noras.*

Yet if the course & circumduction of their yeare be well obserued, it will appeare to haue conteined the full space of twelue monethes, as may appeare by *Plinie*<sup>l</sup>, *Macrobius*<sup>m</sup>, and *Plutarch*<sup>n</sup>. And this was likewise the yeare of other Nations. The *Romanes* did begin their vulgar yeare at the beginning of Winter, as appeareth by *Ouid*:

*Bruma noui prima est veterisque nouissima solis.*

Which course seemeth to bee agreeable to the course of nature, because then the sunne beginneth to returne vnto vs, and therefore wee may rightly deriue the beginning of his circuite from thence: The yeare is diuided into the Spring, Summer, Haruest, & Winter. The *Romaines* did  
accompt

h) *Ibidem*.

i) *Macrobius*, lib. 1.  
1. *Satur.*, ca. 9.

k) *Ouid*, lib. 1.  
fastor.

l) *Plin.* lib. 2.  
ca. 9.

m) *Macrobius*, 1.  
*Satur.*, ca. 12.  
et lib. 1. in  
som. *Scip.* c. 6.  
n) *Plut.* in  
*Num.*

## The first Chapter. 3

accompt the spring that space of time which was betwixt the Calends of March & the Calends of May, ° but the most common & currant entrance of the spring in the reputation of all the nations of the world, was when the plants or herbage of the earth began to waxe greene: and therefore it is rightly tearmed *ver a virendo*, as sommer is called *estas ab estu*, and then is said to begin when heate beginneth. <sup>p</sup>The name of Autumne nor the thing <sup>p</sup>Tacit. de mor. Germ. it selfe (as *Tacitus* reporteth) was not knowne to the Germanes in his time, and diuers countries haue made diuers limitations of the spring, and therefore if it bee agreed betwixt *Titus* and *Seius* that the beasts of *Titus* shal pasture in the grounds of *Seius* all the spring time, the time shall be limited according to the dimension of the spring-tide in that country where the bargain was made: and so it may be said of the other times, and seasons of the year, and if the occupation of a mans ground be granted to *Titus*, *Seius*, *Caius*, and *Sempronius*, so that *Titus* shall haue the occupation of the land in the spring time, *Seius* in sommer, *Caius* in winter, *Sempronius* in haruest, if the interest of any of the same come in question, the Iudge had need be well aduised of the certaintie, and the peculiar difference of these times according to the customarie obseruation of the country in which the grant was made, that he may *sui cuique tribuere*, and giue no erroneous iudgement. Some make a bipartite diuision of the year into winter and

## The first Chapter.

sommer without mentioning the spring, and harvest, defining the sommer to begin at the Equinoctiall of the spring, and to end at the Equinoctiall of harvest : <sup>q</sup> so that sommer and winter are diuided by fixe monethes : then I put case that land is demised to one to haue and to hold during the space of the whole sommer, whether may the lessee put in his beastes in the spring time, and it seemeth that the spring is to be excluded notwithstanding the diuision aforesaid, for the sommer being named *æstus ab æstu* the spring can haue no part in the sommer, for the spring is meane betwixt heat and colde, and therefore the said diuision seemeth to bee vnproper, for *proprie non dicitur quod non dicitur secundum quod sonat* ; <sup>r</sup> and in *Swetia* & other nations lying vnder the Northerne Poale this diuision can take no place : but if a man deuise the dwelling of his house euerie sommer to *Sempronius*, there it may seeme that the spring shal not bee omitted, because our dwelling is diuided into the sommer & winter dwelling : but if a man deuise his ground with all his sommer instrumēt of husbandrie, it seemeth that the spring is in this case to be excluded because there be other instruments of husbandrie vsed in the sommer time the such as be vsed in the spring, winter, or harvest : But the imperiall lawes doe extend sommer from the Calendes of April, to the Calendes of October : the residue of the yeare they allot to winter, and this diuision I will not denie to be grounded vpon

q) Vlp. in l. i.  
§ æstat. de ag.  
co. et æst.

r) Baldus in l.  
vlt. c. de hæz.  
instit.

## The first Chapter. 4

vpon good reason if we respect the yeare in generall not in particular; for in the spring time the Sunne mounting to the toppe of one of the lines of the Equinoctial circle he commeth by degrees nearer vnto vs and so maketh summer, but in harvest he transcédeth the other line of the Æquator and so being farre remoued from vs causeth winter, and therefore not amisse by the cause of heat and cold, are the times of heate and cold distinguished.

The moneth had his name of the Moone which in the Greeke tongue is called *Mene*: and the reason of the name is because the moneth is measured by the circumuolution of the Moone, as *Plato*, <sup>t</sup>*Varro*, *Cicero*, and others haue expounded it. Some doe assigne to the moneth twentie seauen dayes, and eight howers: others twentie nine dayes and twelue howers: they doe measure by the motion of the Moone from poynt to poynt in the Circle, that is, when it is reuolued from one point to the same point: These do set downe for the moneth that course of the Moone in which it doth tend reciprocally to the Sunne, from which it newly digressed. The Athenians did obserue the later order of the moneth, frō whom though the Romanes did in circumstance agree, yet in substance they accorded; for their twelue monethes did not exceed that number of daies which doth consist of the twelue lunarie monethes; so that it is apparant that

¶ *Plat. in Cratil.*

¶ *Varro lib. 5. de lingua Lat. Cicer. lib. 2. de natur. deor.*

## *The first Chapter.*

that both these nations (as all other) follow the Moone in this businesse: and for the more perfit obseruation of this course *Sosigenes* the Ægyptian perswaded and moued *Cæsar* somewhat to alter the monethes, and by consequence the yeare, "neither is this abhorrent from commen vse; for let the case be that A. promiseth to B. that hee will for some consideration pay vnto B. the next moneth 20. li. and the assumpsit is made the eyght day of March, whether may A. haue the space of the whole moneth of Aprill to pay the money in, or hee must needs paye it before the eight day of Aprill next ensuing, accompting the moneth from the eight daye of March: Surely by commo intendment he hath the whole moneth of Aprill to pay it in: for the common people making more accompt of the Calender then of the Calendes doe set downe for a moneth as they find in the calender, not as curious wits may measure by the calendes or by like proportion. \*

The name of day in Latine *dies*, *Varro* deriueth *a deo* or *dio*, both which tend to one purpose. In this discourse my endeuour is rather to open the natures then the names of things. The day is thus defined by *Plato* in his booke *De definitionibus*, if that booke be his: *Dies est ab ortibus ad occasus*: so that how many risings & settings there are of the Sunne, so many dayes he maketh. *Aristotle* more exquisitly, *Dies est motus Solis supra nostrum horizonem.* <sup>a</sup> Two kinds of daies are most in vse, the ciuill

u) *Plut. in vit. Cæsar.*

x) *L. 4. § Sti. si hz red. de statut. Et stat. August. lib. 1. emend. c. 2.*

a) *Aristotle Topic. 5.*

## *The first Chapter.*

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ciuill day and the naturall day: the ciuill day it is therefore tearmed because diuers cities and countries made great diuersities of daies, to which they did allot seuerall compasse of time. The Romans did deduce the day from midnight to midnight<sup>u) Plinie lib. 2. c. 77.</sup> next following, placing the day as it were betwixt two nightes, as in the beginning of the world night was before the day, and night followed it: but the day of the Vmbrians was from midday to midday: of the Athenians from Sun sett to Sunne-set: of the Babilonians from the ryse of Sunne, to Sunne ryfing: the naturall day is that which consisteth of 24. howers being the space wherein the Sunne is rowled about by the motion of the whole bodie of the heauen from a certaine poynt to the same point. The Astronomers make the beginning of this day at noone day or midday, as the Vmbrians; because to all inhabitants of nations continuing still in their regions the sun commeth alwayes at that time to their Meridian, and to that circle which is caried through the toppes and poales of the heauen: and euery region hath his meridian of one sort though they haue diuers meridians in number & in particular, but the rising & falling of the sunne is not in any region alway of one sort, because the points are chaunged, and we see the sun diuersly to rise & fall: so that the Vmbrians may seeme in this to haue done rightly, the Athenians and Babilonians not rightly, the Romaines most  
C rightly,

## The first Chapter.

rightly, who haue not as the other nations contrary to the order of nature, placed the night in the midst of the day, but haue made the night as the two extremes of the day, & therefore haue placed part of the night in the beginning of the day, and part in the end : of which consideration our law may seeme to haue takē regard in that the forepart of the night it assigneth to the day going before, & the later part to the day following, which may evidently appeare by the inditements of burglary : <sup>b</sup> but the reason of the Romane constitution is learnedly deliuered by *Plurarche*: <sup>c</sup> at midnight (saith he) when the day of the Romans doth begin, the sunne is in that region in the lowest point of the heauen, from which it beginneth to tend and to returne to vs and to ascend to our Hemisphere: wherefore rightly doth the day beginne then when the sunne that is the cause of the day doth moue toward vs, & therefore this constitution of the Romanes must needs seeme more probable then that of the Vmbrians, because the beginning of a thing is rather to bee referred to that time when the thing groweth to existence, then when it declineth and beginneth to leaue his existence, so that the opinion seemeth to be good, 11. *Elizab.* in my Lord *Dyer* his reports; that whereas the case was that a lease was made to one of land the eight day of May to haue & to hold for twentie & one yeares thence next after ensuing, & the lessee entred the eight day, and his entrie seemed lawfull

b) Crompr. I.  
P. tit. indicta-  
menta in fin.  
lib. fol. 224.

c) Plur. in  
quaest. Roman.  
qu. 83.

## The first Chapter.

6

lawfull, and that he did not enter as a disseisor, for by the word (*thence*) the first instance of the day in which the demise was made is to be intended, and not the next day ensuing the date: <sup>d) 11. Eliz. 286.</sup> <sup>Dyer.</sup> so that I cannot see vpon what reason in the accompting of the fixe monethes according to the statute of 27. H. 8. of enrolments the day of the date of the deede of bargain & sale shall not be accompted <sup>e) 5. Eliz. 218.</sup> <sup>Dyer.</sup> for any; <sup>f) Comment. ad l. Titius § Luci, de lib. & post. g) Plat. in lib. de definit.</sup> but the vulgar and common sort of men of all countries doe accompt the day from light to darkenesse, which order the Canonistes do obserue, <sup>f)</sup> the night as *Plato* defineth it <sup>g)</sup> according to common admittance is nothing els but darkenesse: Euentide is immediately after Sunset: twilight is a doubtful time equally consisting of light and darkenesse, which is alwaies after euentide. For as betwixt knowledge, and ignorance there bee two meanes, namely doubting, and opinion, so betwixt day & night there is euentide & twilight. Ignorāce is like to night, doubting like to twilight, opiniō is like to euentide, because as opinion knoweth after a sort, but knoweth not truely & surely, because it is not grounded vpon certain reason: so euentide is after a sort day, but absolutely & fully it is not, because it is destitute, & bereft of the cleare light of the sunne: knowledge which relyeth vpon the sound foundation of things knowne is answerable to the day, which is full of cleare, and perfite light. Now as opinion is more like to ignorance then to knowledge, so euen-tide is more

## The first Chapter.

like to night, whereupon enlueth that twilight must needs bee more like vnto night: but now suppose that a paiement of money is assumed to be made within the compasse of such a day, whether is it to be intended of the Romaine day, or some other ciuill day, or the natural day which is wholly in vse amongst the Venetians: for in *Venice* the clocke is told foure and twenty times for the day: and it is meete that this question should be decyded by the custome of each countrie.

Now come we to speake of howers, which to the Romaines were not in vse during the space of three hundred yeares: therefore in their lawes of the twelue tables, times are otherwise set downe, namely, Sunne-rise Noone, and Sunsett: the first, second, third, and fourth watch, *plenum forum*, full market, *bovm solutio*, the time of the loosing of the oxen from the plough, *accensa lumina*, candle light, and such like names. But to know the proper vse of these howers that are fitte to bee obserued, which *Paulus* the Ciuilian noteth: *Cuiusque diei maior pars est horarum septem primarum diei, non supremarum*: he meaneth not that there should be fourteene howers of the day, because it is manifest that there are but twelue, but his meaning is that the greatest parte of the day is spent in the first seuen howers, if you accompt from the first hower to the seuenth *inclusiue*, as namelye, from fixe a clocke in the morning to twelue a clocke: for then there will re-  
mayne

## The first Chapter. 7

mayneto the other parte of the day but fūe howers; And the former parte of the day is not onely the better for the number of howers, but because men in these howers are more apt for the dispatch of their busines: Wherefore *Nonius*<sup>h</sup> vp-  
on these wordes of *Virgill* :

h) Noni. lib. 9.  
de compendi-  
osa doctrin.

*Nunc adeo melior quoniam pars acta diei est*  
commenteth thus. *Our youth is the best part of our age*, and so *Maro* wisely calleth *the first part of the day the better part*, as being the youth of the day: for if a man should number seauen howers from a eleuen of the cloke to fūe in the afternoone; yet these howers will not be so conuenient for perfitting of busines, as the seauen abouesaid: and therefore he that demaundeth six pence for traauyling to a place on foote from eleuen to fūe, to which an other hath gon for a groat from six to twelue, is not altogether vniust, because in the afternoone men be more vnapt and more vnable to trauaile.

The last and least part of time (if it be any part of time) is a moment, which may better be imagined then described, for it is as swift as a man can imagin: and what is more swift then imagination? It hath receyued a definition somewhat obscure of *Plato*: *Momentum est quod nullo prorsus in tempore est*<sup>i</sup>. It is taken by some to be *punctum temporis*: for as a mathematicall point is that *cuius nulla est pars*, so a moment is a point of time *cuius nulla est pars*: yet *Pliny* seemeth to distinguish more rhetorically then truly *punctum temporis*

i) Pla. in Parmen.

## The first Chapter.

k) Plini. in  
Panegy.

l) l. 23. §. ult.  
D. de adult.

m) Linsuis. D.  
de lib. et post.

n) l. 7. §. ult.  
de acquir. re.  
do.

from a moment when he saith : *Quod momen-  
tum, aut immo quod temporis punctum, aut beneficio  
sterile, aut vacuum laude*<sup>k</sup>, the existence of a mo-  
ment cannot possibly be discerned, and therefore is  
not so much as the twinckling of an eye. The vse  
of a moment is more fit for the operation of Law,  
then for the act of a man : for the Law doth ope-  
rate without compasse of time in an instant, but  
man neuer ; for euery act of man must haue space  
longer or shorter, according to the qualitie of the  
work : But the nature of such instants or moments  
which the Law doth imagin is such & so sodaine,  
*ut omnem respuant moram*, as in the Ciuill Law is  
well noted<sup>l</sup> : And the reason is because in the ope-  
ration of Law, that which it doth imagin to be  
done, is *dicto citius*, presently, and without delay  
done<sup>m</sup> : and therefore it is commonly said, it is  
done *ipso iure*, or it is said *ipso iure*, or *ipso facto*. But  
this course can not be obserued in the actions of  
men, who can not doe any thing without space of  
time, because their act is alwayes continuate, and  
therefore must needs be done *continuo tempore*.  
And whereas the act of man is mixt with the act of  
Law: though in regard of the same thing the act of  
the Law be momentary, yet the act of man must  
needes beare some delay. Those thinges by the  
ciuill Law which are taken from enemies, doe  
incontinent become his who doth seise and take  
them<sup>n</sup>, The Law doth giue them vnto him pre-  
sently, but yet there must be a time to take them,  
that

## The first Chapter. 8

that the Law may giue them. And so if when a Lease is made to A. of land for the terme of the life of B, and A. dieth, C. entreth into the land, and inioyeth it, as an occupant; the Law because it wil not haue the freehold in suspence, doth imagin that it was presently and immediatly in C. after the death of A, and that he entred presently: but if we respect this entrie as the act of man, we must needes imagin that he had some time to enter into the land, and by his entrie, which is an act consisting of motion, to gaine the freehold.

It remaineth now according to our purpose, that after this discourse of the partes of time, some thing should be spoken of the differences of time, which I will handle verie briefly: for the matters precedent haue giuen some light thereunto, and they are not of themselues verie obscure.

And first to speak of the time which we cal a con-

tinuall time: that in the ciuill Law is sometime taken for as much as (during a mans life °) and therefore he that hath purchased land for his life, is tear-

med *Perpetuarius*<sup>p</sup>: and in the common Law these wordes (*a tous iours*<sup>q</sup>) make but an estate for life,

yet in proper sense it extendeth vnto the last mark of time: A long or short time is distinguished either by the measure of the parts of time abouesaid, or by the measure of the Law, which is the discretion of the Iudge. The differēce which is made of ancient time and of late time in the ciuill Law, is rather plain the ponderous.

*Vetus accipietur quod non*

est

o) l. 1. §. pe. de  
off. pre. vrb. l. 2.  
C. de his qui  
latr.

p) Alci lib. 1.  
parer. g. c. 37.

q) Littlet. lib.  
1. cap. 1. fo. 1.

## The first Chapter.

r) In l. 11. de  
uiui. leg.

s) L. 1. l. 3. D.  
de pet. hared.

t) l. 2. in prin.  
de ag. plu. ar.  
c. §. idem lab.  
aut si in agr.

u) Idem Lab.  
aut cum queri-  
tur eo.

*est nouum* <sup>r</sup>: And therefore the law of the twelue  
Tables they call their auncient Law, and that  
which followeth it the new Law <sup>r</sup>. But in this  
sense the Law of Nations should be the auncient  
Law, and all other humane Lawes, new Lawes,  
but auncient by the interpretation of a good Ci-  
uilian is that, *cuius initij memoria non extat* <sup>r</sup>, and  
he expoundeth this to be: if there be none aliue  
which knoweth when it had his beginning: Nei-  
ther hath any heard of the beginning of the thing  
of those which did know it <sup>u</sup>. A certaine time is  
that which hath a certaine beginning and ending;  
• An vncertaine time is directly contrary: Certaine  
• times are the yeare, the day, the moneth, &c. An  
• vncertaine time is signified by these wordes; be-  
fore, after, in times past, some time, about such a  
time, &c. But there be diuers sortes of vncertaine  
times: First, either that which is altogether vn-  
certaine, as when such a ship shall come out of  
*Asia*: for we know not whether it shall at any time  
come from thence, or when it shall come. Se-  
2 condly, that is said to be vncertain, which though  
it be vncertaine whether it shall be or no: yet if it  
be admitted to be, it is certaine when it shall be:  
as if I graunt vnto one the Corne that shall grow  
in such a ground, for I know not whether it shall  
grow or no: Or if I promise to be a godfather to  
that child which shall be borne of Martha, within  
three daies after it be borne, for I know not whe-  
ther any shall be borne: Or if I promise to pay  
such

f  
fu  
be  
liu  
ce  
be  
ho  
vn  
it  
to  
wa  
wh  
aft  
for  
be  
tab  
the  
Th  
the

2  
a  
r  
i



## The second Chapter. 9

such a summe of money when *Tisius* shall be of full age: here it is well knowne when *Tisius* shall be of full age, but it is vncertaine whether he shall liue till he come to full age. 3. that is vncertaine, which though it be certaine that it shall be, yet it is vncertaine when it shall be; as the howre of death. The *present time* is so small and vn sensible, that it is almost of no continuance, and it is but the conioyning of that time which is past to that which is to come; Time past is that which wanteth his beginning; And time future is that which neuer had ending. A conuenient time is after diuers sorts: First, either it is conuenient for some, and not for all; as when some causes are to be heard, and not other some: Secondly, or profitable for all, but not alwaies; as the Termes whilest there are no dayes of vacation, *dies non iuridici*: Thirdly, or it is profitable for all, and alwaies; as the *Affises*.

## The second Chapter.

*That by the Law of Nations, Emperors, Kinges, and absolute Monarches, haue full power and authoritie to seise the Landes and Goods of their subjects, condemned for heinous offences.*



Any man be so straitly minded, that he thinketh this prerogatiue to be too large and ample for an absolute Monarche: let him think there withall that

D him-

## The second Chapter.

himselfe is so base minded, that he cannot sufficiently iudge of the great worth and demerit of so high an estate: for the name of a king importeth so great paines and charge, that a kingdome seemeth not to be a sufficient or counteruailable recompence: For *Themistocles* his choise must either be verie reasonable, or exceeding desperate, when he accompted it better to sinke into his graue, then to ascende to a throan: Wherefore not doubting of the great charge of it, let vs examine the continuall custome of Nations in the executing of this power. *S. Lewis* the French king, famous in that nation for integritie, & iustice, doubted not by publike iudgement to prescribe the farmes, lordships, and landes of *Peter* the Earle of *Dreux*: And so were the goods and possessions of *Charles Duke of Burbon* seised and forfeited<sup>c</sup>. And they haue a Law in *Scotland*, that the goodes of persons condemned shall go wholie to the Eschequer without any deduction or reprisall to wife, creditor, or children. The *Romanes* did allot their fines, penalties, and forfeitures to the sacrifice, and seruice of their Goddes, and therefore they were called *Sacramenta*<sup>d</sup>. But the *Athenians* did giue onely the tenth part of the goodes that were forfeited to religious vses: as may appeare by the record of the condemnation of *Archipolemus* and *Antiphon*, which runneth in these tearmes; *Archipolemus & Antiphon undecim-uiris capitalibus ad extremum supplicium traditi: bona eorum publicata,*

e) Bodi. lib. 5.  
de repub. c. 3.

d) Festus in  
verb. sacrament.

## The second Chapter.

10

*cata, decima Minerua data, domus eorum solo equata:*

And although *Iustinian* the Emperour did vpon some scrupulous conceit abrogate the Law of giuing the goods of condemned persons to the publicke treasury, and did therefore establish a Law, that they should remaine to their children<sup>f</sup>. Yet diuers held this Law to be new, & different from the course of auncient Law-makers: for euen in the most auncient times in case of high Treason in all common weales of the world, such forfeitures haue been admitted: for it was thought that the goodes of such persons condemned, were either by fraude, violence, or other corrupt courses wrested from the common weale: and therefore were to be restored to it againe: or els because such persons hauing offended against the common weale should satisfy it that way: & therefore were such goodes conueyed away by Law from wife and children, because for the most part they were vniustly heaped together for the aduancement of wife and children. But such prerogatiues haue been in auncient time so firmly annexed to the Septer and estate roiall, that by the ciuill Law such things which are properly called *iura maiestatis*, by the common Law *iura regalia*, cannot be seuered from the regall dignity, & therefore *Baldus* calleth them *sacra sacrorum*, and *Cynus*, *individua*<sup>h</sup>, the inseparable incidents of a kingdom: And by the ciuill Law such things can not be seuered from the princely Diadem, neither can

f) Authent.  
bona damnato,  
de bonis  
dominator. C.

## The second Chapter.

i) Bald. con.  
174. lib. 3. et  
con. 19. co.

k) 10. Elizab.  
Com. Informacion  
pur Mines 310.  
per Wray.

l) Fitz. Na. br.  
Corrod. 232.

m) Com. Inf.  
pur Mines ib.

n) 22. E. 3. lib.  
Affic. pla. 49.

o) 1. H. 7. 23.

any man prescribe in them<sup>i</sup>. And so it is said in our Law, that where the King hath any commoditie in the right of his Crowne; as if he haue a Mine containing in it gold or siluer, by the graunt of the land in which it is contained, the Mine doth not passe, because he hath that by his prerogatiue royall, and they be two seuerall thinges and of diuers degrees<sup>k</sup>. And whereas the Priorie of *Wenlocke* was one of the auncient Priories which were of the foundation of the Crowne, and the King graunted the said Priorie in ample words: yet the King onely did meddle with the Mines of gold and siluer that were in it<sup>l</sup>: And by the graunt *omnium & singularum Minerarum*, these Mines shall not passe<sup>m</sup>. And though the king graunt to one the retourne of all maner of writtes, yet he shall not haue the retourne of the summons of the Eschequer, because that toucheth the Crowne, and is not betwixt partie and partie<sup>n</sup>. Neither by the Law of England can any man prescribe in such thinges: For it is said 1. H. 7. that no fraunchise may prescribe to hold plea of Treason; and whether the king may graunt any such libertie or no, the Iustices were in great doubt<sup>o</sup>. But 46. E. 3. it was held by *Knivet* Iustice, that a man might claime a fraunchise of *Infangtheefe*, and *Outfangtheefe*, and waife and straye by prescription; but he cannot haue the chattels of Fugitiues or Felons, vnlesse it be by especiall graunt, because that it belongeth vnto the King as to his Crowne, and there-

## The second Chapter.

II

therefore can not passe from him, but by speciall graunt: <sup>p)</sup> 46. B. 3. 26. 21. H. 6. this diuersitie is taken: such thinges as accrue to the king by matter of recorde, as the fines, issues, and amerciamentes of courtes doe not lie in prescription: but in such thinges as belong to the crowne, & the title of the doth not grow by matter of record, as waife, stray, wrecke of the sea, treasure founde, and the like a man may præscribe in, <sup>q)</sup> 21. H. 6. but as these are speciall prerogatiues which are graunted to a prince so they are graunted for speciall causes: by which princes must bee directed not by their owne voluntary conceits or vnſatiabſe desires, least it happen that *magna imperia*, be *magna latrocinia*: for good gouernours will not imitate the lewd monarches of nations, as *Caligula*, *Nero*, *Caracalla*, *Carinus*, Romaine Emperours, nor *Seleucus*, nor *Alexander* the great, or rather the proud, which did claime a generall and absolute power indefinite & illimitate ouer all mē, ouer all things, without difference or exception: which did thinke that they might giue lawes to others and not to bee bound by any; which pretended that there was but one law for all common weales, and that was to obey euerie thing which the king commaunded, and that that was iust in regard of the subiectes which was profitable to their ruler, like to that prince of pirates and robbers in *Heliodorus*, <sup>r)</sup> *Si imperij lege v-* <sup>r) Heliod. lib.</sup> *tendum fuisset, prorsus mihi velle suffecisset*: Like to <sup>1. Æthiop.</sup> that saying of *Iulius Caesar* the vsurper. *Sylla lire-* <sup>hiflor.</sup>

## The second Chapter.

*ras nesciūt qui dictaturam deposuit: mecum homi-*  
*nes consideratius loqui debent, ac pro legibus habere*  
*quæ dico:* <sup>c</sup> like to that of *Iulianus* though spiced  
with some sprinkle of mildnesse: *Polliceor absque*  
*omni prerogatiua principum, qui quod dixerint, vel*  
*senfuerint pro potestate authoritatis iustum esse existi-*  
*mant:* <sup>e</sup> or like to that sinister clause of the Popes  
infolent vanitie ( *de plenitudine potestatis,* ) the  
last of which wordes *Baldus* playing withall, put-  
teth in steade of it *tempestatis:* " yet I will easi-  
lie graunt, that if any prince doe by sword and  
conquest subdue any countrey; as the whole  
countrey is gained and possessed by this exploit:  
so all the landes and goods of euery inhabitant  
in that countrey are his, vntill hee did giue them  
or restore them vnto the former owners: As by  
the lawe of this realme of *England*, if a man be  
attainted of felonie, and the *Queene* pardoneth  
him all felonies, and executions, and doth like-  
wise pardon and release all forfeitures of lands  
and tenements, and of goods and chattels, this  
pardon and this release cannot serue but onely  
for the life of the partie, if the office be found,  
for then the land is the *Queenes* by matter of  
recorde, and therefore there must bee expresse  
wordes of restitution: and as to the goodes, the  
*Queene* is entituled to them without office: <sup>x</sup> so  
if it be found by office that *I. N.* the *Queenes*  
tenant was seised of certayne landes, and dyed  
seised, and that *W.* his heyre intruded, and af-  
ter

<sup>c</sup> *Suetonius* in  
*Cæsar.*

<sup>e</sup> *Ammian*  
*Marcell.*  
*lib. 23.*

<sup>u</sup> *Alciat. reg.*  
*3. præf. 8. et ad*  
*L. 2. C. de in*  
*iur. voc.*

<sup>x</sup> 29. H. 8. Br.  
chart. de pard.  
52.

## The second Chapter. 12

ter by acte of parliament the Queene pardoneth  
all intrusions, in this case the entrie and offence  
are pardoned and released, but not the issues,  
and profits: for the Queene was before entitled  
by matter of recorde <sup>a)</sup> for when any thing com- <sup>a) 33. H. 8. Br.  
meth to princely possession which did before charters de  
belong to any inferior person, it cannot bee re- <sup>par. 71. intrusi.  
stored to him without actuall donation. And 21. Issues  
ret. 22.</sup>  
*Xenophon* sayeth, that it hath beene a perpetuall  
lawe amongest all men, that all thinges taken  
by warre, whether they bee money, goods, or  
men, doe belong to them which tooke them:  
<sup>b)</sup> and *Thucydides* affirmeth the same to bee a <sup>b) Xenoph. lib.  
7. Cyropæ.  
c) Thucyd. l. 3</sup>  
common lawe to all nations: <sup>c)</sup> howbeit the  
Romanes rather by mercy then rigor of lawe  
were onely content with the tenth parte of the  
goods, and did remitte the residue to the con- <sup>d) Appian. lib.  
de bel. ciuil. 2.</sup>  
quered persons. <sup>d)</sup> And it hath alwaies beene ac-  
compted the propertie of barbarous nations to  
haue no lawe written nor ratified by common  
consent, neither touching these rights nor pre-  
rogatiues, nor other matters, but onely the vo-  
luntarie conceite of the monarch, as *Linie* hath  
iudiciously obserued: <sup>e)</sup> But *Aristotle* maketh one <sup>e) Liui. lib. 37.</sup>  
exception from the rule, and that is of the Spartan  
Kings, whome hee affirmeth to haue directed  
their actions by prescript of lawe: and *Diodorus* <sup>f) Ar. 3. polit.</sup>  
*Siculus* saith, that the *Ægyptian* kings did first be-  
ginne to rule by a settled and determinate lawe,  
and that all other nations were gouerned by  
the</sup>

## The second Chapter.

g) Diodor. Sicul. lib. 3.

h) Plin. in Panegy.

i) § Sed natural. instit. de iura.

k) Deci. Conf. 209. in casu 2. 69. consultus. 390. quoniam § 19. visis. 557. accurate.

the chaungeable wil of their soueraigne, & and the Romanes did after refine themselves as appeareth by *Plinie* speaking to *Traian*; *Te legibus subiecisti, legibus Caesar, quas nemo principi scripsit*: And presently after he saith, *Quod ego nunc primum audio, nunc primum dico: non est princeps supra leges, sed leges supra principem.*<sup>h</sup> But to open and declare further the soueraigne and ample authoritie of monarches ouer the lands and goodes of their subiects, though it haue beene in auncient times held and affirmed by the ciuill law, that such things as are parcell of the law of nations could not be taken away by the prince from his subiectes: and therefore they might not be depriued of their demesnes or inheritance of lands, or of the property of their goods and chattels which they enioy by the law of nations: <sup>i</sup> as I haue sufficiently shewed in my Direction to the study of the Law, Cap. 7. & 8. but onely of such things as belong to them by the Ciuill law: yet by the opinion of the later Ciuilians this is helde to bee no law, but that the Princes haue for speciall causes free disposall of their landes and goods as *Decius* fully proueth<sup>k</sup>, and this later opinion seemeth to bee more reasonable, and more consonant to the truth: for first though the distinction of demesnes and the proprietie of goods be parcel of the law of nations, yet the meanes wherby they are acquired are prescribed by the ciuill and common lawe: so that they are not altogether parcell of the law of nations

## The second Chapter.

13

ons : <sup>1</sup> Again the right of demefine and property is not alike in all nations, <sup>m</sup> but is moderated, and ordered by the lawes of particular comon weales; But suppose that the king wil take away from any of his subiectes the right and power of vsing and pursuing an action for the recouery of their lands, goods, chattels, or dammages : Surely this is permitted by no law, but by the ciuill <sup>n</sup> and common law expreffely prohibited : for the king cannot grant to any person that he shal not be impleaded or sued, in this or that action: & though his highnesse may graunt that I. S. for trespassses or any thing done wrongfully in his mannor of Dale shal hold conifance of pleas within the same mannor, yet in this case he doth not take away the action of the partie, but doth onely restraine him to bring his actio in a certain place: <sup>o</sup> But here it may be objected that a king or absolute monarch may without cause seise the lands & goods of his subiects : for it is plaine that a king hath more power ouer his subiectes, then the father hath ouer his children : but by the ciuil law the father may take away the goods of his children when hee will: <sup>q</sup> therefore the king may take away &c. To this reason grounded vpon the ciuill lawe, I do thus answer, that by the law of nations kinges haue not such an indefinite power ouer their subiects as fathers by the ciuill law haue ouer their children : for by the law of nations kinges were chosen and ordeined at the first for the safegard and protecti-

E

on

<sup>l</sup> Bal. & Ia. in  
l. omnes. C. Si  
con. ius vel  
utilitat. pub.  
<sup>m</sup> Herodot. li.  
4. Strab. lib. 11.  
Arist. lib. 2.  
polit. Tacit. de  
mor. Germa.  
Cæf. lib. 4. & 6.  
de bel. Gal.  
<sup>n</sup> l. 1. C. de  
prec. imp. off.

<sup>o</sup> 8. H. 6. 19.  
<sup>p</sup> l. i. vit. C. de  
consul.

<sup>q</sup> l. placet. 79.  
D. de acquir.  
hære. l. acqui-  
rit. 10. D. de  
acquir. re. do.

## The second Chapter.

on of the lands goods & persons of their subiects, so that they may not without cause bereaue them of their goods, and therefore there is a good rule in the ciuill law that *in priuatorum agris, nihil ne publico quidem consilio cum ipsorum iniuria capi ius est.* <sup>r</sup> And to that purpose Cicero speaketh well:

r) l. Venditor.  
13. D. de com.  
præd.

*Videndum erit ei qui rem pub. administrabit, ut suum quisque teneat, neque de bonis priuatorum publice diminutio fiat:* and for this cause God did appoint a certain portion of land to euery tribe of the Isra-

l) Deutero. 17

elites: <sup>r</sup> and by reason of a priuate title *Naboth* would not sell, or chaunge his vineyard with *Achab*: and in the inauguration of the king of *Hungarie* this was exacted of him by oath: *ut iura regni integra conseruaret:* <sup>u</sup> And in the ciuill law it is said, *Qui pleno iure Dominus est, alienandi, dissipandi disperdendi, ius habet:* <sup>a</sup> And againe, *sua quisque rei arbiter, ac moderator est.* <sup>b</sup> So that it is euident

r) 1. Reg. 21.

u) C. in tellect.  
33. extr. de iur.  
reueran.

a) l. 7. cod. de  
relig. l. sed et si  
l. 25. §.

consuluit D.  
de hæred.  
petit.

b) l. in reman-  
dat. 21. C. de  
mand.

that without cause, the propertie which subiectes haue in goodes and landes may not bee altered by their prince. And therefore wittily sayeth D. *Gentilis*, that they which argue to the contrarie do not dispute, or drawe their arguments *ex castis fontibus Philosophia, aut ex ipsis iurisprudentia riuis, sed e scholis sophistarum: hallucinati sunt Theologi, adulati sunt iurisconsulti, qui omnia principibus lice-*

*re asceuerarunt:* <sup>c</sup> I would not be mistaken in this Chapter, sithence I hold an indifferent course betwixt prince and people: neither consenting to them which say, that princes may seise the lands

and

c) Alberic.  
Gentil. Dec.  
1. disput. 2.  
disput.

## The second Chapter. 14

and goods of their subiects without cause, nor to them which thinke that they may not seyse their lands and goods for any cause: but my resolution is, and the summe of this discourse is, if it bee diligently and impartially obserued, that princes may lawfully claime, and take to their owne vse the lands and goods of their subiects for the causes aboue said, and prescribed by lawe, and not otherwise: and by this word (Princes) I meane none but absolute Monarches: for the law of nations alloweth this prerogatiue to none other. And therfore I do greatly like of that saying of *Hipocrates* vrged in the ciuill law: *Lex est rerum omnium domina, quia scilicet & ciuitatis cuiusque & ciuium singulorum patrimonium constituit, definit, & uetur: Lex sola dominium rerum confert: sola dominij acquirendi modos constituit, citra quos acquiri nullius rei dominij potest.* <sup>f) S. 2. de bon. possel. & apud Vlpi cor. tit. reg. 19.</sup> This foundation being laid, I hope my assertion may firmly stande that the law of *England* in giuing to the Queene the lands and goods of subiects for some peculiar causes is iust and reasonable: as when a true man is pursued as a felon, and he flieth, and waiueth his owne goods, these <sup>g) 29. E. 3. 29. 37. H. 8. Br. Estray. 9. Stam. fol. 186. a.</sup> are forfeited as if they had beene goods stolne. And so if a man be outlawed of felony or treason, he shall forfeyt all the landes & tenements which he had at the time of the felony or treason comitted, or at any time after, as well as if he had beene attainted by verdict: <sup>h) 28. H. 6. 5.</sup> howsoeuer *M. Parkins* holdeth opinion that attaynder by outlawrie shall haue relation to the exigent; as to the landes

### The third Chapter.

and tenements : so that a feoffment of land, or a graunt of rent made before the exigent awarded by him that is attainted in such manner is good in his conceit : but he saith that as to an attainder by verdict, that it shal haue relation to the time of the felony done, according to the supposall of the inditement, as to lands and tenementes : and so it is of an attainder by confession : <sup>i</sup> But M. *Stamford* being better aduised saith, that as soone as any of the offences aforesaid are committed, hee is restrained to make a gift or any other alienation of his lande : and if he doe, it shall presently bee made void by his attainder, and it is not materiall whether the attainder be by outlawrie or verdict, and this is agreeable to the booke of 38. E. 3. fol. 37. <sup>k</sup> but he saith that the forfeiture of the goods by attainder by outlawrie shall haue relation to the exigent, and forfeiture by attainder by verdict shall haue relation to the verdict. <sup>l</sup>

i) Parkins  
Graunts. 6.

k) Stamford  
fol.lib. 3. 31. 2.

l) Stamford.  
192.

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*That the worthinesse of blood hath beene principally respected of all nations.*



He diuision of inheritances *in stirpes*, & *in capita*, hath made great diuision in diuerse common weales, yet in all of them the worthinesse of bloud hath beene regarded: By the Romane law the sonne of the

## The third Chapter. 15

the elder sonne who is dead shall equally succede in the inheritance with the second sonne. And whereas in Germanie there was a contention betwixt the vncles and nephewes of the right of inheritances, and for the deciding of it, the Emperour *Otto* the first, did cause a Parliament or generall assemblie of estates to be held for the disceptation, and deciding of this doubt: When after much busines and argument, no determination could be had, the matter was ordeined to be tried by single combat, an vsuall thing in these daies (for it was about the yeare of the incarnation of our Sauour nine hundred fortie and two <sup>a</sup>) and a formall triall referred to God, when mans wit was at a *nonplus*: But in this case, that part ouercame which did accompt the sonnes of elder sonnes as sonnes; and therefore it was ratified by Law, that they should equally diuide the inheritance with their vncles. Amongest other nations diuers contentions haue risen about this matter: for when *Eunomus* the King of the *Lacedemonians* had two sonnes, *Polydectes* the elder, and *Lycurgus* the yonger, and *Polydectes* deceased leauing no sonne lyuing at the time of his death, and therefore *Eunomus* being dead, the septer of that kingdom came to the handes of *Lycurgus*: afterward when *Polydectes* his widow had brought forth a sonne, *Lycurgus* did willingly, and readilie yeeld to him the septer <sup>b</sup>: Which act of *Lycurgus* agreeth fully with our Law, whereby it is ruled, that if a

<sup>a</sup>) Witichindus lib. 2. histor. 2. Sigebert in chron. Ottonis 1.

<sup>b</sup>) Plut. in vit. Lycurg. Iustin. lib. hist. 3.

### The third Chapter.

man haue a sonne, and a daughter, and the sonne purchaseth land, and dyeth, and the daughter entreth, and after the father begetteth an other sonne of the same wife, this sonne shall haue the land <sup>c</sup>. So if a man enfeoffe an other vpon condition, and the condition is broken, and the feoffor dyeth without issue his wife *priuement enseint*, and the brother of the feoffor entreth for the condition broken, and after a sonne is borne, he shall auoide the possession of his vncle, & may lawfully claime the inheritance <sup>d</sup>. And it is likewise said, that after two, or more discent, the heire afterward borne claiming by discent may enter into the land; but he shall not haue a writ of Accompt for the mesne profites, nor any writ of Wast <sup>e</sup>. But in cases of purchase the Law taketh a difference, and therefore it is said 5.E.4. by *Billing*, that if a man deuise land to a man, and his heire, and the deuisee dieth hauing issue a daughter, his wife being *priuement enseint* with a sonne, who is afterward borne, the daughter shal reteine the land *in perpetuum*, which the Court graunted <sup>f</sup>. And 9.H.6. it is said, that if a remainder cannot veste in any at the time when it falleth, it shall not veste in him that is borne afterward, where an other hath entred before <sup>g</sup>. But to retourne to the examination of this matter by historie, *Pausanias* reporteth that *Cleomenes* the king of the *Lacedamonians* being dead, a controuerſie sprung betwixt *Arens* the sonne of *Acorasus* the eldest sonne of *Cleomenes*, who died before

c) 19.H.6.6.

d) 9.H.7.25.

e) 9.H.6.23.

f) 5.E.4.6.

g) 9.H.6.23.  
2. Eliz. 190.  
pls. 18.

## The third Chapter. 16

forè his father, and *Cleonymus* the second sonne,  
the vnclè of *Arcus*, but by *Senate-decree* the king-  
dome was adiudged to *Arcus*<sup>h</sup>. And *Polydore Vir-*<sup>h) Pausan.</sup>  
*gill* reporteth that king *Edward the third* being de-<sup>lib. 3.</sup>  
ceased, *Richard the second*, the sonne of his eldest  
sonne obtained the kingdome, and was preferred  
before *John*, *Edmund*, and *Thomas*, the sonnes of  
king *Edward*<sup>i</sup>. *Paulus Æmilius* an excellent writ-<sup>i) Polyd. virg.</sup>  
ter of the matters of *Fraunce* likewise telleth, that  
in hist. reg.  
when *Hanno* had inuaded the kingdome, and  
Angl.  
expulſed *Erkenbalde* the sonne of his elder bro-  
ther, this matter was brought into question: in  
the ende *Hanno* was conſtrayned to laie aſide  
armes, and to ſtande to the iudgement of the  
Peeres, who adiudged that *Erkenbalde* ſhould  
haue the ſame power and intereſt in the king-  
dome, which his father might haue had if he had  
ſuruiued<sup>k</sup>. Neither will I denie that examples<sup>k) Paul. Æmil.</sup>  
may be produced on the contrarie part: as name-<sup>in tit. Carol.</sup>  
lie the contention betwixt *Artemenes* and *Xerxes*  
Craſſ.  
for the kingdome of *Persia*: for it is deliuered by  
*Herodotus*<sup>l</sup>, *Iuſtin*<sup>m</sup>, *Plutarch*<sup>n</sup>, that a controuer-<sup>l) Herodot.</sup>  
ſie beeing rayſed in the kingdome of *Persia* be-<sup>lib. 7.</sup>  
twixt *Artabazanes* ( as *Herodotus* ) *Artemenes*,<sup>m) Iuſtinus</sup>  
lib. 11.  
as ( *Iuſtinus* calleth him ) and *Xerxes* the ſonnes<sup>n) Plut. in Ar-</sup>  
of *Darius Hyſtaſpes* about the ſucceſſion in the  
taxerx.  
Monarchie of *Persia*, *Demaratus* was at the ſame  
time there, who was driuen and expulſed out of  
the kingdome of *Sparta*, and he ſignified vnto  
them, that the Law and cuſtome of the *Spartanes*  
was

### *The third Chapter.*

was, that the sonne that was borne after the father had attained to the kingdome, was to be preferred before the elder brother who was borne before; for which cause the kingdome was adiudged to *Xerxes* the yonger sonne, who was borne of *Darius* being king, whereas the other was begotten of him being a priuate man: But this iudgement was after reuerfed; For when after the death of *Darius*, the same controuersie was handled betwixt *Arfica* begotten of *Darius* being a priuate man, and *Cyrus* being borne of him after his aduancement to the kingdome, and *Parysatis* the mother did in the behalf of *Cyrus* vrgē and reuiue the controuersie betwixt *Xerxes*, and his brother, the *Persians* notwithstanding the former iudgement, did now adiudge the kingdome to *Arfica*°. Neither am I moued though in the contention for the Dukedome of *Millayne*, betwixt *Lodwike* and *Galearius* bretheren, whereof the one was borne before his father obtained the Dukedome, the other after, the contrarie were determined for Law P: For by the most examples of euery common weale, and by the continuall practise of nations most euill (which onely course I obserue in this discourse) the right of *Primogeniture*, or elder-brothership is fenced, supported, and defended against this last decree of the *Millanases*, and that first of the *Persians*: For *Herod* the king of the *Jewes*, did preferre in the succession of his kingdome *Antipater*, who was borne before he was

o) Plut. in vit.  
Artaxerx.;

p) Guicciard.  
lib. 1. histor.

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was king, before *Alexander* and *Aristobulus* begotten after he was king<sup>a</sup>. And many yeares after in *Hungarie*, *Bela* their king being dead, *Geysa* being borne when he was a priuate man was inuested with the Crowne<sup>r</sup>: and before that *Orto* the first could be setled in the Empire of Rome, his brother *Henry* made a quarrell to it, because he was borne when his father was Emperor: But the matter discending to armes, and battaile, victorie did adiudge the Empire to *Orto*<sup>r</sup>: Wherefore two or more contrarie examples are not in this case to be regarded; As that of *Genzericus* the king of the *Vandales*, who made his testament in this forme, or rather this Law in forme of his testament, *Si Rex moritur, qui ei genere proximus, eternu maximus erit regni hares esto*: for *Procopius* noteth his great age when he made this Law, and it may be that others will note him for his dotage if he did amisse, for his discretion, if he did it to prevent a daunger<sup>r</sup>. So when *Charles* the king of *Sicely* died he had two sonnes, *Charles Martell*, and *Robert*: *Martellus* died liuing his father, but leauing a sonne, whereupon the Lawyers had plentiful matter of disputation offered vnto them, whether the sonnes sonne should be preferred before the vnclie in the possession of his graundfather: but by the Popes meanes, *Robert* obteyned the kingdome: But the Emperour *Fredericke* reuerfed this sentence, and the Pope cancelled his rescript<sup>r</sup>. But *D. Bartolus* giueth this reason of

q) Ioseph. lib.  
antiquit. 16.

r) Fl. Blondus  
Decad. 2. lib.  
6. Micha. Ri-  
tius lib. de re-  
gi. Hungar. 2.

r) Sigebert. in  
Chron.

r) Procop. lib.  
de bel. Vandal.

3. In pr. 24<sup>th</sup> 4.

### The third Chapter.

the Popes doings, because the kingdome of *Sicilia* was one of the fees of the Church of Rome, so that it did not belong to *Robert* by any lawfull succession, but by the graunt and inuestiture of the Lord of the fee \*. Neither is it materiall that the *Nomades*, Barbarians, did preferre the yonger bretherne before the children of the elder bretherne, as *Strabo* reporteth: *ἄλλοι τιμῶν τε καὶ τῆς τιμῆς χάριν ἀρετῆς ἡμῶν.* <sup>a</sup> yet I will graunt that in the succession of regall dignities, the worthines of blood is lesse to bee respected, then in the succession of common inheritances, because in that case the commoditie of the subiectes, and the abilitie of them that are to succede is politikelie to bee respected: And therefore diuers Ciuilians doe with vnited consent pronounce that the good estate of the kingdome and subiectes, the profite, peace, and safetie of the same, is more to be heeded *quàm sanguinis series*, the course of blood <sup>b</sup>. And *Roboam* preferred *Abias* his yonger sonne, before his elder bretherne in the succession of his kingdome <sup>c</sup>. And *Salomon* the yonger brother <sup>d</sup> was preferred before his elder bretherne: But this must be done warilie, and by the warrant of a good conscience; otherwise it can neyther please God, nor profite man, least a king doe by his choise preiudice his subiectes; as *Micipsa* did by the adoption of

*Inurga*

x) Barto. in  
Arth. post  
fratr. C. de  
legit. hered.

a) Strabo lib.  
16.

b) Luc. de Pen.  
in 5. nepot. C.  
qui num. lib.  
10. et in l. 1. C.  
de lyro. lib. 12.  
Bald. in c. 1. de  
feud. Marchi  
c) 2. paralip. 11  
d) 2. Reg. 1.

## The third Chapter. 18

*Iugurtha*<sup>e</sup>. But the reasons are manie and force-  
able, wherefore the worthines of bloude shall  
in the course and conueiance of inheritances  
bee principally respected. First, *Ius quod persona*  
*inest per modum substantia, est ab ea insepara-*  
*bile, et in nullo alio subiecto potest verificari*<sup>f</sup>. But  
*ius primogenitura* is in the eldest sonne, or in  
his issue *per modum substantia*: therefore it is  
inseparable from him, and cannot extend to  
any other. Secondly, the aucthoritie of *VL-*  
*pian* prooueth it, affirming that hee is a pa-  
tritian, who is borne before his father was  
made a Senator, as well as he, who is borne  
after that hee is possessed of the Senatorie cal-  
ling<sup>g</sup>. Thirdly, it is apparant by manie pla-  
ces in the feudall Law, that sonnes and ne-  
phewes may succeede in the fees, and inheri-  
tances of Dukes, Marqueßes, and Earles: and  
so it is of the inferiour and vulgar sort of men.  
And it is well said of *D. Hotoman*: *Ius sangui-*  
*nis quod in legitimis successioneibus spectatur, ipso*  
*natiuitatis tempore quæsum est*. Fourthly, it  
should bee against all Lawes *proximitatis gra-*  
*dum*, that they which are in a more remote de-  
gree the worthines of consanguinitie should be  
preferred before them that are in a neerer degree.  
Fifthly, because *Primogenitura* is an insepara-  
ble incident to the eldest sonne, and whatso-  
euer is claymed by this, must bee claymed by

e) Salust. in  
bel. Iugurth.

f) Arg. l. for  
did. C. de ex-  
cul. mun. lib.  
10.

g) l. Senator. 3.  
S.D. de Senat.

### *The third Chapter.*

the person of the eldest sonne, and none can succede in the place of the first begotten as first begotten, because there cannot be two first begotten : But no Law more respecteth the worthines of bloud then the common Law, which preferreth the brother before the sister in case of discent : the elder brother before the yonger, whereas the middle brother purchaseth land : the sister before the vncle, and the vncle before the cosin<sup>h</sup>, and all these particular prerogatiues of kindred *Mast. Littleton* windeth vp as it were in one clew, when he saith, that when a man purchaseth land in fee simple, and dieth without issue, euery one, that is his next cosin collaterall for default of issue may inherite : and therefore it was well and wisely agreed by the *Iustices decimo quinto Elizab. in Cleeres case*, that in a collaterall discent from any which purchaseth landes, and tenements, and dyeth without issue, the heires of the part of the father and which are of the bloud of the auncestors males in the lineall ascension by the father in the same degree, as the brother of the graundfather of the fathers side, and his issues be they male or female shall be preferred before the brother of the graundmother of the father side and his issues : And so the brother of the great graundfather of the fathers side, namely the brother of the father, of the father, of the father of the purchasour and his issues bee they male or female shall be

h) Littleton, tit.  
Fee simple.

### *The third Chapter.*

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bee preferred before the mother of the great grandmother, namely the brother of the mother of the father of the father of the purchasor and his issues. For the female sexe is more base then the male in lawe. And it was likewise agreeede, that if the purchasor dyed without issue, and hath not any heire of the part of the father that the land shall discend to the next heire of the parte of the mother, that is, to the race of the heyre of the males of whence the mother is discended, rather then to others, and in this case of *Cleve* because the blood which was betwixt the vncl of the part of the mother of the heire, and the heire himselfe came immediatly by the womā, but the blood which was betwixt the cosin germane of the fathers side, & him though it came originally from the woman, namely the grandmother, yet it is deriued to the heire by the males, so that the dignitie of the blood doth surpise and excell the proximitie of the degree; therefore it was adiudged that the cosin should haue the land. <sup>i)</sup> 15. Eliz. 2. comm. cleres case. 442.

## The fourth Chapter.

*That in making title by prescription and continuance  
of time immemorall, all nations haue consented.*



¶ All worldly things time is most  
puissant : for it endeth some things  
quickly, some things once, and at  
last, some things it preserueth, some  
things it continueth vnto the end  
of the world, and the force of time is pretily de-  
scribed in these poems.

*Res omnes, aurum, chalibem, deglutio, ferrum,  
Stagna, lacus, fontes, ebibo, rum fluuios,  
Tabida consumit lignum, lapidesq; verustas :  
nullaque res maius tempore robur habet.*

a) Gl. h. c. illud  
de prescrip.

If by the course of nature time be such an in-  
croacher vpon other things, then surely arte & law  
doth imitate nature which giue vnto it such po-  
wer and authoritie, as to chaunge, to raise, to alter,  
to defeat, to strengthen and to establish titles, nei-  
ther doth the law of nations attend the strict cir-  
cumstances of the ciuill or common law, in which  
these two lawes doe square : for by the ciuill lawe  
there is required iust title which the common law  
requireth not : and *bona fides*<sup>a</sup> which the com-  
mon law requireth not and continuall possession,  
which the common lawe onely requireth. Pre-  
scription

## The fourth Chapter. 20

scription was first brought in, that there might be a certainty of titles and peaceable possession without contradiction, for a long time might turne to a right: wherefore it is well obserued in the ciuill lawe *bono publico intraducta est usucapio, & praescriptio ut sit aliquis litium finis*: <sup>b</sup> whereupon that speech of the Lacedemonians in *Isocrates* is grounded: Wee holde this lande giuen vnto vs by the posteritie of Hercules, confirmed by the Delphicke Oracle, and the inhabitantes of it being ouercome of vs ( heere note a triple title in shewe, and yet all these in effect but a prescription ) yee knowe well that all possessions eyther priuate or publicke to bee confirmed by prescription of long time: we haue held *Messana* more then foure hundred yeares. <sup>c</sup> And so *Iepthe* did pleade prescription against the *Ammonites*; <sup>d</sup> This land (saide he) haue wee possesse three hundred yeares. The French maintaine their title of *Fraunce* onely by prescription, as *Bodin* confesseth: <sup>dd</sup> for conquered it was by king *Edward* the third that happie & triumphant Monarch: assured to King *Henry* the fifth and his heires, \* not to *Queene Katherine* and her heyres: <sup>e</sup> And some Diuines holde (for others doe oppose themselves against this lawe of prescription) <sup>f</sup> and obserue that the Iewes neuer made question of the title of their *Semi*, because the Cananites did defend themselves by the prescription of 500. yeares: wherefore *Ariabannus* the Parthian king did, as *Tacitus* sayeth, *Per vaniloquentiam*

<sup>b</sup>) b. lib. 1. de  
usucap.

<sup>c</sup>) *Isocra.* in  
Arch.

<sup>d</sup>) *Iudic.* c. 11.

<sup>dd</sup>) *Bodin.* lib.  
de repub.

<sup>e</sup>) *Graft.* in H. 5

<sup>f</sup>) *Pet. Mar.*  
comm. in lib.  
iud.

<sup>g</sup>) *Aug.* de te.  
ser. 105. *Epi-*  
*phan.*

## The fourth Chapter.

*quentiam* vainely demaund of *Tiberius* the territories & possessions of the Macedonians hauing bin a long time posselt of *Cyrus* and *Alexander*. And *Soliman* more soundly did demaunde the rightes of *Constantine* the Emperour after a thousande yeares. <sup>i</sup> But most vnaduisedly of all did the king of *Persia* demaund all these thinges which did belong to the Persian Empire from the first foundation of their Monarchie vnto the conquest of *Alexander Magnus*, of *Constantine* and his sonne, and of *Alexander Seuerus*: <sup>k</sup> as if the auncient inhabitants of *Pannonia* should now claime *Hungarie* which the Hunnes did conquer, name, and to this day keepe: and vaine was the quarrell which *Masimissa* made to the Carthaginians lande, <sup>l</sup> alleadging that they ought to haue no more then *Dido* the Tyrian Queene enioyed, which was no more then coulede bee compassed by the hyde of an Oxe being cutt into thonges, for they had posselt these landes almost seauen hundred yeares: likewise weake was the title which *Antiochus* the great pretended against the *Aetolians* and the *Ionians*, because these people were once subiect vnto his auncestors: & hee is well confuted of the Romanes by the lawe of prescription, that though his great grandfather, did atchiue these cities by warre yet his grandfather and father neuer enioyed them, but the cities enioyed their libertie. There be some interpreters of the lawe, which thinke the king of *Fraunce* by prescripti-

h) Tacit. ann.  
li. 6

i) Ioui. 30. 34.

k) Herodia. li.  
6. zon. Ammi.  
lib. 17.

l) Liui. lib. 34.

*maximaque solum  
facta de nomine  
Byzant. Taurin  
quintum posuit  
circundare lego  
Virgil. Eclog.  
L. 1.*

## The fourth Chapter.

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prescription to be exempted from the Emperours subiection, <sup>m</sup> against whom rather adulatoriously then aptly *Alciar* replyeth, that no prescription of time wil hold place against the Empire: <sup>n</sup> for that is not true in a prescription of time, which is immemoriall, that is when no man as it may be commonly beleueed, hath eyther seene or heard the contrary: and this by the ciuill law is the space of one hundred yeares. ° But here before I wil grant that such prescription will hold against a king or an Emperour, this is onely in such case where neither possession hath beene had, nor clayme made against the said king or Emperour, for if claime onely haue beene made as the kings and Queenes of England haue done in entitling themselues kings and Queenes of *Fraunce*, and beare in their scut-chions the ensignes and armes of that kingdome, and so keep the ciuill possession of that kingdome, though they haue lost the corporall possession in such case I do not thinke that the prescription of a thousand yeares ought to preuaile: but in a case of a common person prescription will hardly run against the prince. Therefore it hath beene held in our bookes, that if the kinges tenant *in Capite* bee seised of an aduowson, and the church happeneth voided, and hee dyeth, and the fixe monethes doe passe, ( nay suppose fixe score yeares doe passe ) then an office is found, the king shal haue the presentment notwithstanding the laps before the office. But if the question be asked whether the ordinary

<sup>m</sup>) Fulg. Sacc.  
lib. 1. C. tit. 1.

<sup>n</sup>) Alciat. lib.  
5. de iust.

<sup>o</sup>) Alexan. 5.  
Conf. 16. Alci-  
at. 3. conf. 24.

<sup>p</sup>) 14. H. 7. fol.  
22.

G

ordinary

## The fourth Chapter.

dinary may present by laps against the king, and if  
 he may not, how the cure shall bee serued in the  
 meane time betwixt the laps, and the kinges pre-  
 sentment: <sup>9</sup> It is answered by some that the ordi-  
 narie may present one who shall be remouable at  
 the kings will, and some thinke that he shal seque-  
 ster the profites of the benefice to serue the cure :  
 but in some case the King may not surcease his  
 time, as if the tenant for terme of life do forfeit his  
 estate to the king, if he be not seised during his life  
 hee may not afterward seise it, <sup>99</sup> but in this case  
 the reason is because hee can haue no other estate  
 then he which forfeiteth, and he which commeth  
 in of the estate of an other can haue no greater  
 right then he had : for if a man haue land in the  
 right of his wife, or in the right of a Church hee  
 can not haue it otherwise then the Church or the  
 wife hath it : <sup>r</sup> so if there be Lord and tenant, and  
 the tenant alieneth in mortmaine, and the Lorde  
 entreth, yet hee shall haue onely such right in the  
 land as he hath in the feignorie, notwithstanding  
 that the statute do say, *Quod proximus dominus in-  
 trabit & retinebit in feodo* : <sup>r</sup> For this is grounded  
 vpon naturall reason, and *naturalia sunt immutabi-  
 lia* : and the princely prescription must bee main-  
 tained *bona fide*. Wherefore the Duke of Sauoy  
 which had the Cittie of Nice in pledge of the  
 French King, did vniustly withhold that Cittie  
 frō the king being the lawfull owner then, because  
 hee had inueterate possession in the same, for by  
 the

9) Ibid. fol. 21.

99) 8.H.5.  
Trauers. 47.

1) 18.E.3.20.

1) 39.E.3.38.  
50.E.3.21.1.5.  
E.4.61.

## The fourth Chapter. 22

the ciuill law a man may not prescribe in a pledge:

<sup>c</sup> and *Ionus* is likewise angrie against the king of <sup>t) l. 9. C. de pl.</sup> *Fraunce* himsele for keeping *Perpinianum* in the <sup>act. Deci. 3.</sup> like sort: *Parum sincera fide* (saith he) *veteris pacti* <sup>confi. 108.</sup>

*conditionem multis cauillationibus inuoluebar:* <sup>u) Iou. lib. 1.</sup> <sup>u</sup> for

it is true that *Cephalus* saith, *in questione valde dubi-* <sup>x) Ceph. conf. 102.</sup>  
*rabili non est prescriptio.* <sup>x</sup> But surely *bonafides* is

requisite in such matters of prescription, except it  
be apparat that the will of God is for the prescrip-

tion: Wherefore *Bellarmin* confesseth, that the  
Turke doth lawfully possesse such thinges as hee

hath taken from vs because God his will is that for  
our sins we should be cast out of the land, where-

in we and our ancestors inhabited. <sup>a) Bellar. 5.</sup> <sup>contr.</sup> But he doth  
not possesse them *bonafide*, because hee can not

by any speciall meane conuey them particularly  
to himsele, for as Doctor *Gentilis* hath well ob-

serued: *An Turca opinio latrocinantis cogit at de in-* <sup>b) Alb. Gentil.</sup>  
*sta voluntate Dei.* <sup>lib. de iu. bel. 1.</sup> <sup>22.</sup> <sup>b</sup> *Aratus* the Sicyonian was so

strong and peremptorie for the title of prescrip-

tion, that hee did not thinke it conuenient to re-

moue or take away from the vsurpers any thing  
that they haue violently taken from the owner,

if they haue had possession during the space of  
fiftie yeares onely. <sup>c) Cicer. 2. de</sup> <sup>offic.</sup> <sup>c</sup> Prescription hath alwayes

beene of force to hinder these that had right to  
pursue their clayme: Wherefore *Demosthenes*

sayth well; Hee that hath helde an other mans  
landes or goodes a long time should not please  
himself therewith, but impute it to fortune which

d) Demosth.  
ad maca.

## The fifth Chapter.

hath hindred the lawfull owners. <sup>d</sup> Is any thing more to bee laughed at then that which is said of some interpreters of the law, who are not to bee laughed at, that the kingdome of *Spaine* may now be claimed by the Romane Emperour, by reason of his ancient imperiall right, whereas it is manifest that sithence the time of the ancient Romane Emperours, it hath beene a long time posselt of the Saracens, a long time of the Spaniards.

## The fifth Chapter.

*That by the consent of all nations consent principally maketh a lawfull mariage.*



If a man should examine the several rites, circumstances, and ceremonies of the diuers people of the worlde in the knitting and celebrating of mariage, he might as well number and obserue the diuerse-couloured spottes of the Chamæleon: for euery nation hath had in this by some fatall lotte both their custome and chaunge of custome: I will onely endeuor to proue that which is contained in my assertion, *that by the consent of all nations &c.* The definition of thinges is alway the best prooffe: therefore it is good to beginne this discourse with the definition of mariage:

*Mariage*

## The fifth Chapter. 23

Mariage is the lawfull coniunction of man and woman, conteining an indiuiduall societie of life, and the participation of diuine and humane right <sup>a)</sup>, where it is said, a lawfull coniunction, nothing els is meant, but a free consent executed by the contract, which as it is the beginning of the definition, so it is the ground of the mariage, and these wordes, *conteining an indiuiduall societie of life*, do signifie that they shall continue foreuer together as long as they liue: Howbeit the rule of the common Law do in this sauour of the irregular Religion, *Post contractum matrimonij ante carnalem copulam possit alter altero inuito religionem intrare* <sup>b)</sup>. And for the further proofoe that the ground of mariage is consent, there be three things by the Canon Law required to mariage <sup>c)</sup>, *Fides*, *Proles*, and *Sacramentum*: *Fidelitie* which is put in the first place is the hart of mariage, and it springeth of consent: and therefore if a man do contract with a woman in this sort, *Contraho tecum si te pro quaestu adulterandum exposueris*, this is no contract of mariage, because it is *contra bonum fidei*, which consisteth in this, that neither of the married couple shall break the bond of mariage, but shall faithfully and vnitedly obserue it. Likewise Progenie is an other thing that mariage requireth, and therefore it can not be a good contract of mariage, if it be made in this forme, *Contraho tecum si generationem prolis euites*, or *si venenum sterilitatis accipias*, because mariage was instituted of God for the solace of

G 3 man,

<sup>a)</sup> 3<sup>a</sup>. q. c. mul. lam.

<sup>b)</sup> Gazalup. in verb. nuptiz.

<sup>c)</sup> Codi. ap. C. vlti. c. 27. q. 2.

## The fifth Chapter.

man, and the multiplication of mankind by children. Thirdly, a solemne promise is requisite in marriage: and therefore if a man do contract with a woman *donec ditiores, vel pulchriorem habeas faminam*, this is no good league of marriage, because it is contrarie to the oath of an indiuiduall societie. And so if any man in a foreine land sucking as yet the smoak of the *Popes Tobacco* be a votarie to Religion, and a bondslaue to his cloyster; for England (the Lord be praised) is at this day as free from Monkes, as it is from wolues. Three things are required at his handes, namely, chastitie, obedience, and the abdication of propertie, as well in landes as in goodes<sup>d</sup>: But that consent hath been the ground of Matrimoniall contractes, may appeare by the vsuall course and practise of nations: Wherefore *Virgill* exclaime against *Romulus* for marrying the *Sabine* women against their willes, and accompteth it rather a rape, then a marriage, *Raptas sine more Sabinas: sine more*, that is, contrarie to the custome of nations<sup>e</sup>. And *Propertius* inueyeth against him for this more vehemently<sup>ee</sup>:

d) *Gazalup.*  
in verb. matrimo-

e) *Virgil. 8.*  
*Æneid.*

ee) *Propert. 2.*  
*Elcg. 6.*

————— *tu criminis author,*  
*Nutritus duro Romule lacte lupa*  
*Turapere intactas docuisti impune Sabinas.*

f) *Tertul. de*  
*de spect. et*  
*adu. val.*

Yea diuines *Tertullian* and *S. Augustine* haue sharply reprocued this fact of *Romulus*<sup>f</sup>, and  
*concor-*

## The fifth Chapter. 24

Cyprian agreeth vnto them, reprehending *Romulus* in this maner, *Vt Matrimonium facias rem concordia per discordiam auspicias, rapis, farocis, fallis, & nuptia tibi sunt rupta hospitij fadera*.<sup>g)</sup> Cypri. lib. 4. de ido. na.  
By the Ciuill Law mariage may bee concluded by an oath, which beeing but a contract, it called *sponsalia de futuro*<sup>h)</sup>: And so in ancient time the Law seemed to be, as may appeare by these wrested words of *Cydisippe* to *Aconitius*:  
<sup>h) ff. de verb. sing. l. verbum crit.</sup>

*Iuro tibi sanè per mystica sacra Diana,*

*Me tibi venturam comitem sponsamq; futuram*<sup>i)</sup> Ouid. in epistol.

The mariage betwixt *Dido* and *Aeneas* was by consent accorded, by consent prosecuted, by consent executed, beeing witnessed and celebrated *calo tonante*, and no otherwise<sup>k)</sup>: for the <sup>k) Virgil. lib. 4.</sup> *Phrygian* and *Tyrian* Lordes followed their hunting, whilest the great hound of all caried away the hare. And the mariage betwixt *Martia* and *Cato* wittily described by *Lucan* had no publique attestation, but the presence of *Brutus* onelie:

*Pignora nulla domus, nulli coiere propinqui,*

*Iunguntur sacri consentiq; auspice Bruto*<sup>l)</sup> Luca. lib. 2.

But I would not be so vnderstood, as though I should haue this meaning, that nothing els is requisite to the perfection of mariage, but onelie the bare consent: For to explaine my meaning more at large, I hold that euen by the Law of Nations, consent is onelie the efficient cause of mariage: but  
the

## The fifth Chapter.

2 the materiall cause is *corporum coniunctio*, the for-  
 3 mall, the bringing of the wife into the husbandes  
 house, *et aqua, et ignis interuentus*: and therefore  
 in my opinion *D. Horoman* is not iustly reproo-  
 ued of *D. Gentilis*<sup>m</sup>, for holding that this *deductio in domum* is the formall cause of mariage, for  
 though the Emperour say<sup>n</sup>, *uxor fuisti: deductio in domum ostendis*, so that by the opinion of  
*Gentilis*, this *deductio* shall be onely a prooffe, and  
 argument of the mariage & no substantiall forme  
 of it: yet by his fauour this is nether logike nor  
 reason; for may not an argument be drawne a  
*causa formali*, and because *anima* is a signe *corporis animati*: for a man may reason thus, *animam ha-*  
*bet: ergo est corpus animatum*: therefore shall not  
*anima* be the forme of a lyuing bodie? But if we  
 will be ruled by *Iustinian*, the opinion of *D. Ho-*  
*roman* seemeth in this to be neerer to the truth,  
 though his learning and iudgement, if I haue any  
 iudgement, be farre inferiour to the worthines of  
*Gentilis*: yet I acknowledge them both to be  
 worthy men, *et virulo tu dignus & hic*. But to ex-  
 amin the rule of the Emperour, which before I  
 spake of, *non impletur nuptiarum conditio nisi nup-*  
*tiarum accedat festiuitas*<sup>o</sup>, it seemeth that there  
 must be necessarilie *deductio in mariti domum*, as  
 may appeare by the auncient custome of the *Ro-*  
*manes* in their mariages, which is briefly glaunced  
 at by *Virgill* in these wordes, *Sparge marite*  
*noces*<sup>p</sup>, to which there is a custome in some part  
 of

m) Alberic.  
 Gentil. lib. 3.  
 lectio. et epi-  
 stolar. c. 6.

n) L. 15. D. de  
 cond. et dem.

o) L. sancimus  
 24. C. de nup.

p) Virgil. in  
 Bucolic.

## The fifth Chapter. 25

of England somewhat correspondent, which hath been much vsed, namely, that the husband breake-  
 keth a cake ouer the head of the wife, as soone as  
 she is within the threshold of his house: which  
 custome and the like I will neither commend, nor  
 discommend, but will onely censure them some-  
 what agreeably to *Senecaes* <sup>q</sup> censure of certaine  
 pointes of the ciuill theologie of the *Romaines*,  
*Hac omnia populus seruabit tanquam cōsuetudine re-*  
*cepta, non tanquam deo accepta.* And though *Genti-*  
*lis* presse *Hosoman* with this obiection out of the  
 ciuill Law, that the mariage may be celebrated  
 by an other, *viro absente*; but not *muliere absente*:  
 Yet that is no ordinarie course of mariage, but ex-  
 traordinarie: As when the parties cannot conue-  
 niently come together, as being seuered by Sea,  
 which hapned lately in the case of *James king of*  
*Scots*, who was married to *Anne* the sister of the  
 king of *Denmarke*, by a substitute or *enter-deux*, as  
*Chystraus* reporteth <sup>r</sup>. And the cannon Law  
 which *D. Gentilis* too hastily calleth *irrationalē*,  
*erroneum, cecum, anarum totum* <sup>t</sup>, will shew this  
 difference vnto him: for it maketh two sorts of  
 mariage, both lawfull and perfite, yet the one  
 it tearmeth *verum*, the other *presumptum*. *Verum*  
*Matrimonium* is thus defined: *Which is made be-*  
*twixt lawfull persons by apt wordes, all impediment*  
*of law remoued*: The other is thus defined, *which*  
*by the interuention of some other is celebrated be-*  
*twixt lawfull persons by the arbitrage of some others,*

H

and

<sup>q</sup>) Augusti. lib.  
 de ciuit. dei. 6.  
 c. 10. ex Senec.  
 lib. de super-  
 fluit. et matri-  
 mon.

<sup>r</sup>) l. 5. D. de ri-  
 nup.

<sup>r</sup>) Chytr. lib.  
 de reb. orb. ar-  
 cto. ab anno  
 1580. vsq; 16  
 1590. Eyzin-  
 ger. in thes.  
 princip.

<sup>t</sup>) Alberic.  
 Gentil. lib. 1.  
 lecti. et epi-  
 stolar. c. 11.

## The fifth Chapter.

u) Gof. in  
tract. de con-  
trah.

x) l. si vicin. 9.  
c. de nup.

a) Modest. in  
lin. liber. 24 D.  
de rit. nup.

b) Papin. in l.  
donat. 31.  
D. de donat.

c) Vlpian. in l.  
item legato.  
49. §. 1. D. de  
leg. 3.

d) L. 3. §. 1. D.  
de donat. in-  
ter vir & vxor.

and there doth not immediarly succcede copula carna-  
lis<sup>u</sup>. But in deed these verie wordes, *duxisse uxore*<sup>u</sup>,  
rem, which signifieth the complementall act of  
marriage doth sufficiently import the necessitie of  
the forme of marriage aboue mentioned. The effi-  
cient, materiall, and formall causes of marriage  
haue been aboue shewed: The finall cause, as all  
will agree, is the propagation of children<sup>a</sup>, and  
the restraint of wanton lust. If this assertion should  
be examined by the ciuill Law, it might receiue  
great disputation, varying and straying wholie  
from scripture, the authentike of Religion, yet  
wholie for consent: for the ciuill Law is so strange  
for consent, that it is positiuely set downe by a  
great Ciuilian; That if a man doe vse too fami-  
liar acquaintance with a gentlewoman that setteth  
not her bodie to sale vnto him, that this is not con-  
cubinage, but marriage<sup>a</sup>. An other Ciuilian hol-  
deth, that a woman to whom one hath shewed an  
husbandlie affection, ought in continuance of time  
to be accompted his wife<sup>b</sup>: To whom agreeth Vl-  
pian saying as boldlie and libidinously, *Berwixt*  
*a concubine and a wife there is no difference*, ex-  
cept the wife be a more worthy parsonage<sup>c</sup>. Yea  
euen in the bodie of their Law it is set downe  
for a rule, that *inter concubinatum et matrimo-*  
*nium nihil nisi affectio interest*<sup>d</sup>: *ingenūaq; mu-*  
*lier domi ante restationem pro uxore habenda est*<sup>d</sup>.  
These are the oracles of the parots and parasites of  
the *Romane* Emperours, who sought to sholder  
out

## The fifth Chapter. 26

out the truth of God his word, and to varnish  
 their owne sinnes, by the dreames of such disso-  
 lute Lawyers, who thought perhaps that they  
 might as wel defende, as commit fornication, and  
 concubinage: Vpon whose reuerend opinions  
 the Pope sprinckleth the holie-water of his dis-  
 pensations, yea and dispenseth for incestuous ma-  
 riage, not onely with Dukes, and noble men, but  
 as *Angelus Perusinus* sheweth, euen with Barbors,  
 Tailors, and Butchers \*. But it is fitlie said by some,  
 that he doth rather *dissipare quam dispensare* <sup>e</sup>. And  
 others haue been bolde to saie, that he which ob-  
 teineth such dispensation, perhaps will hardlie  
 escape *in foro poli*, in the court of heauen, how-  
 focuer hee be safe *in foro Roma*, in the court of  
 Rome <sup>g</sup>. Howsoeuer the Canonistes, whereof  
 the most part doe beare the cognisance of the  
 whoore of *Babylon*, do auouch that by such dis-  
 pensation, *veritas natura per Papam non tollitur*,  
 (which he cannot doe though he would) *sed in-*  
*umbratur*: and therefore saie they, the dispensa-  
 tion is lawfull <sup>h</sup>, an argument drawne from the  
 owles nest, and from no place of Logike: But  
 the Emperour *Theodosius* speaketh onelie of a  
 lawfull and honest consent, in more modest  
 tearmes, saying: *Matrimonium absque ulla pompa*  
*et celebritate nuptiarum, atque adeo absq; ullis dota-*  
*ribus instrumentis firmum est, liberiq; ex eo sus-*  
*cepti iusti sunt*: Heere the Emperour excludeth  
 pompe from mariage, but not consent: Neither

e) Angel. Per.  
 in l. matrem. §  
 filiam ad Treb.

f) Felin. post  
 Doct. in C. que  
 ecclesiarij de  
 constit.

g) Arg. C. fin.  
 de præscript. et  
 Alci. in l. §. pe-  
 dum C. fin. re-  
 gund.

h) Arg. c. sedes  
 de rescript. l. 3.  
 §. permit.

## The fifth Chapter.

i) l. si donati-  
o. um. 22. c. de  
nup.

doth he admit concubinage to be mariage<sup>t</sup>. It is now shewed that consent is required by the imperiall Law to the constitution or making of mariage. It shall not be amisse to inquire, whether it were necessarie or no by the auncient Law of the *Romanes*, which was in the time of their flourishing estate, the Law almost of all the Nations of the world, as *Ouids* speech importeth :

*Gentibus est alijs tellus data limise certo*

m) *Ouid. 2.*  
Fastor.

*Romana sparium est urbis, & orbis idem<sup>m</sup>.*

And *Claudian* auoucheth the same, though he liued when the *Romane* common weale was much empaired :

*Armorum legumq; parens qua fundis in omnes  
Imperium, primique dedis cunabula curis<sup>n</sup>.*

n) *Claud. 3.*  
stil.

By the auncient Law of the *Romanes*, if a woman had been kept in a mans house by the space of a. yeare, he might claime her as his wife<sup>o</sup> : And by that Law a man might lend his wife to his friend,

o) *Horomanus*  
in comment.  
ad duodecim  
tabul.

for the procreating of children<sup>p</sup>; as *Cato* lent his wife for that purpose to *Hortensius*, which though *Plutarch* accompt fabulous : yet *Appian* reporteth it as true<sup>q</sup>, and *Quintilian* affirmeth the same<sup>r</sup>.

p) *Strabo lib.*  
11. Plur. in  
Cat. Tertul.  
in apologet.

q) *Appian lib.*  
2. de bel. ciui.

r) *Quintil. lib.*  
2. c. 5.

Neither is it vnlikely that it was a custome practiced of the *Romanes* : for this lending of wiues was permitted by the Lawes of *Lycurgus* : and as *Plutarch* reporteth, it was a Law established by *Numa*<sup>s</sup> : A brutish Law doubtles, and one of the maine errors of these great common weale men, who ( as the Apostle saith ) became vaine

s) *Plut. in com-*  
parat. Lyc. et  
*Numa.*

## The fifth Chapter.

27

in their thoughts, and their foolish heart was full of darkenesse and as they regarded not to acknowledge God, so God deliuered them up vnto a reprobate mind . to doe those things which are not conuenient : <sup>c)</sup> Now that we haue shewed that consent is necessarie for mariage, it remaineth to bee declared how farre forth it hath beene accompted necessarie. When the Romane Empire was in her infancy and first rising, it seemeth that a verie slight consent would haue serued, as may appeare by these wordes of Suetonius, writing the life of Caligula: *Mar. L. Cassio Longino, consulari collocatam abduxit, et in modum iustæ uxoris propalam habuit.* But of the Emperour Constantine furtiue and priuy mariages are vtterly condemned and abiudicated : <sup>a)</sup> because it is against Christianitie, to which (the Lord therefore highly be praised ) all the nations of the earth begin to open their eyes and giue their free consent. Such mariages as haue the publike testimony of the Church are greatly commended of Tertullian: *Vnde sufficiam ad enarrandam felicitatem eius matrimonij, quod ecclesia conciliat, & confirmat oblatio, & obsignatum Angeli renuntiant, pater rato habet.* <sup>a)</sup> And the Emperour Leo hath determined that the mariages of Christians shold be confirmed by the testimony of holy and ecclesiastical prayer, and that these mariages which are otherwise contracted should not be held for good, and Harmenopolus testifieth that by ecclesiasticall Canons it is prouided, *That there should be no priuie*

<sup>c)</sup> D. Paul. ad Roman. 7, v. 13 & 18.

<sup>u)</sup> l. vxor. 7. Cod. de repub.

<sup>a)</sup> Tertullian lib. ad vxor. 3.

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b) Harmenop.  
lib. 4. c. 4.

c) Fitzh. N. B.  
350. N.

d) Luk. c. 12.  
v. 35. 36.

mariages, and that no mariages should be celebrated out of the Church : <sup>b</sup> And by the common law as *M. Fitzherbert* saith, a woman married in a chamber shall not haue dower of her husbands lands : but he modestly saith, that it seemeth reasonable that shee should haue dower, *M. Parkins* peremptorily affirmeth, that the lawe in his time was directly to the contrarie, that the law was so in his time, I must take vpon *M. Parkins* credit : for I haue not read (to my remembraunce) any yeare booke which was written in his time or since, wherein that is recorded for law, as to that which *M. Fitzherbert* saith, that it seemeth reasonable, how could it seeme reasonable vnto him, vnlesse the mariage it selfe had seemed reasonable, & if he thought such a mariage to be good & lawfull, therein sauing reformation hee failed, for beside the authorities which immediatly before I haue cited, to proue that mariage must be celebrated in a publike place, and in publike maner, it appeareth, that in the Iewish common weale, that course was followed in the time of our sauour, by part of a similitude which he vseth : *Let your loines be girt about & your lightes burning : & ye your selues like vnto men that waite for their master when hee wil returne from the wedding*, whereby it is manifest, that some testimony of friendes and neighbors is requisite to the celebration of mariage: and Pope *Innocent* the third reporteth, that this was no new guise, nor any popes inuention, but the custome of the

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## The fifth Chapter.

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the ancient Christian Churches, that *conuentiones matrimoniorum in ecclesia promulgentur*. \* And this promulgation is in *Lumbar die* called *Bannum*, <sup>e) cap. 4. extra. de cland. desp.</sup> in <sup>f) c. cum tua extra despons.</sup> *England* the *Banes*, or asking in the Church: & by the custome of diuers common weales, it is called *manasse*, the giuing of hands: & so is the rule of <sup>g) in c. cum tua. 6. qui matr. accus. poss.</sup> *Iustinian* the Emperour, who saith; that if any *dini-*  
*nis t altis scripturis* shall sweare vnto a woman that he will marrie her, this saith he is sufficient for the contracting of marriage, but yet there must bee a publike celebration of the marriage according to the rite & solemnitie vsed in Christian churches:  
<sup>h) Iustin. Nou. 74. S. 4.</sup> <sup>b</sup> so then it is in some clearennes that consent principally maketh mariage, as the grounde of that strait societie, and the celebration is as the forme rising out of this materiall cause, which maketh it to bee knowne, and to bee publicly notified and ratified: for as to the age of the partie, who is to bee married, that hee shoulde bee *plenis nubilis annis*, or that hee should haue power of ingendring, *ut iusto accedat robur amoris*, or that they may bee equall in degree, because *dulce iugum paritas*, these doe not make marriage, but cause it to bee a more conuenient marriage, but the consent that maketh mariage must be ouert and expresse: for though the parties will, doe appeare in a secret will; and which may onely be proued by circumstances, yet consent is onely verified in an expresse & vnfolded wil: wherefore *D. Baldus* saith wel, that a neutrall consent, which  

is

## The fifth Chapter.

is not demonstrated by word, nor by deed, is not correspondent to the actes of men, neyther doth it make them essentially perfect. Now if any man doubt whether the consent of the parties onely do knit the marriage, or the fathers consent be necessarie, as to that point the ciuill lawe, which in this matter all nations follow for the reasonable-nesse of it, standeth thus. *Eorum qui in potestate patris sunt sine voluntate eius matrimonia iure non contrahuntur, sed contracta non soluuntur: contemplatio enim publica utilitatis* (that is to fill the Citie or common weale with people) *privatorum commodis praefertur*: <sup>k</sup> And againe, *Si forte pater concordans matrimonium*, that is, a fit marriage) *& forte liberis subnixum* (that is, confirmed by procreation of children) *velis dissolvere, et certo iure patria potestatis turbare, sic erit res tractanda, ut patri persuadeatur, ne acerbè patriam potestatem exerceat.* <sup>l</sup>

k) Pant. l. 2.  
senten.

l lib. 1. de lib.  
exh.

## The sixth Chapter.

*That by the practise of all nations Democracie hath beene better downe, and Monarchie established.*



**D**emocracie I haue alwaies taken contrarie to the auncient diuision of Monarchie, aristocracie, &c. to be no forme of a common weale, if it bee properly taken for the equall sway of the people without any

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ny superioritie : for the heele can not stand in place of the head, vnlesse the bodie be destroyed : and the anatomic monstrous : it is against the nature of the people to beare rule : for they are vnfitte for regiment, as a mad man to giue counsaile, which *Anacharsis* well perceiuing did laugh at the assemblies and counsels of the Athenians, because they did commit the summe of their affaires to the peoples furie : and *Xenophon* writeth thus of the Athenian, that is, his owne common weale : I can not allowe the state of the Athenians because they embrace that forme of common weale, in which wicked and lewde persons doe more flourish then good men and innocent : \* which commonweale notwithstanding *Bodin* calleth vntruely *omnium popularium laudatissimam*, *Plutarch* as vntruely, *omnium minime vituperandam*, but if it be true that they say, in how miserable estate are other popular common weales, all which ( the Romane commonweale onely excepted ) are farre short of the Athenian estate : and *Machiauel* did abuse his owne pen, and the patience of others, in one place preferring Democracy before al other kinds of gouernment, <sup>b</sup> yet in another place, shewing how he wold haue *Italie* restored to the ancient glorie and excellencie, he sheweth that that can not be done but by a monarchie, and onely by the Popes monarchie, <sup>c</sup> in this point accomplishing the part rather of a magician, then a mathematicke, wishing for that

a) *Xenoph. in lib. de repub. Atheni.*

b) *Machia. in obseru. in Liui.*

c) *Machiauel. in lib. de princip. c. 9.*

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which

## The sixth Chapter.

which the deuill would desirously effect, but imagining that which in truth can neuer be: yet again he departeth from this opinion, when hee preferreth the Venetian common-weale before al commonweales. <sup>d</sup> *Plato* was wont to call Democracy, *Nundinas populares*, the peoples fayre: wherein euery thing was sold for money. *Aristotle* disagreeing from him in many things, yet he agreeth with him in this, vtterly condemning Democracie, vsing not onely strong reasons of his owne, but *Homers* authority for it *ὅτι αἰγυπιοὶ πολὺναιγυπία*, and *Maximus Tyrius* a worthy man in his time, that hee might conuince Democracie to be a most pernicious euil, bringeth for prooffe herof, the examples of the Athenians, the Carthaginians, the Siracusans, and the Ephesians: & if a man should seriously respect the brittle dependance of things vpon the peoples braines, he shall easily and clearely perceiue, that whosoever shal but ground his owne estate, much lesse the estate of the cōmon weale vpon the peoples fantasies, *domū ex luto facit*, & findeth nothing more certain then vncertain accidents, & if a man should compare honour to vulgar reputation, he might as well compare a course packthreed to the fine twist of the silke worme, & a garland of iuie to a crown of gold: to be straight way an honest mā, because the multitude commend him, is no more necessarie then that a man should be euill, because few are like vnto him: I wold rather like a cōtrary argumēt: he is liked of the most, therefore he is not

d) Machiau,  
in Liui.

e) Maxim.  
Tyri. orat. 3.

to

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to be followed of the best: who was more fauoured by the gretest part of the *Troians* the the strumpet *Helena*? she that was recouered & recaried forsooth for her excellent beautie by so many thousand shippes, by so many valiant & vnconquered captains, after the downfal of a goodly citie, after the flames of so many wars, after so many spoiles, and homicides. The people did wonder at that paragon, as hauing excellent felicitie to be caried home in so glorious a triumph, & to be transported from *Troy* to *Greece*, from a floud of hony to a sea of *nectar*, being the blazing starre to that famous warre which the brauest soldiers doe at this day admire: *At Capis & quorum melior sententia menti*, what thought they of this popular miracle? what thought *Eneas*? that she was *Troia & patria communis erinnis*: what thought *Antenor*, a wise, iust, and vertuous nobleman, *Antenor censet belli praeidere causam*. But if euery thing that the common people approueth be commendable, what is then discommendable? euen that which deserueth most commendation, namely vertue it selfe. When one tolde *Antisthenes* that the most part liked him, hee demaunded of him incontinent for what vice they liked him, as if it were impossible that vertue should please the common people. *Anacharsis* thought it verie inconuenient that artificers should contend in cunning, and these that had no arte should bee iudges of their cunning:

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ee) Senec.  
epist. 29.

by the same reason they that are not vertuous, can not iudge of them that be vertuous, & if they can not iudge of them, how can they with conscience praise them : and if not them, how can they with safe conscience praise others. Is it not therefore a madnes to gape for their suffrage, which are incompetent iudges, and to care for their controlment which are vn sensible censors. *Phocion* liked nothing that the common people liked. *Seneca* thinketh that none can please the people to whom vertue is pleasant. \* The multitude haue this prouerbe verie rife in their mouthes (too many to bee good ) and yet in this glasse they can not see themselues, as they likewise said (*omnia ple-  
na stultorum*) forgetting themselues.

This beast of many heades hath a threeforked tongue : with the one part it tickleth the eares of them whom they flatter : with the other it licketh their wounds : with the last, and sharpest it pricketh their hearts : with the first they flatter them, lulling their senses with faire wordes, and with soft speeches sliding into the bosome by forgeries and fables : with the other they lick their woundes, excusing their crimes, extenuating their faultes, cooling and calming their rage, that are incensed against them : with the third they pricke : for let the popular idoll be once crushed, none will sooner tread vpon him then the people ; & if perhaps they weepe for him in this especially  
is

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the prouerbe verified, *lachryma nihil citius arefcit*: They deale with their idols as the diuell dealeth with witches: when they are in prifon they leaue them: Nay, for the moft part none are more proan and readie to accufe when time ferueth, then thefe adulatorious excufers, *Quo teneam vultum mutantem protea nodo?* The wayward people may be iuftly compared to a bundell of thornes, which will beare vp a great man, but will pricke him if he leane or lie vpon it: They are like the windes, which *Neptune* truffed vp, and deliuered in a bagge to *Vliſſes*<sup>f</sup>, beeing ſure as long as the mouth of the bagge is ſhut, but if there be neuer ſo little a chinke or riſſe, they quicklie glaunce out, one raunging one way, another ſome other way, like to *Samſons* foxes with fire-brandes at their tayles. What a frenzie is it therfore for any to plant his credit vpon ſuch reſtles braines: as if a man ſhould endeuour to make the ſea ſolid, to make mountaines plaine, to build a caſtle in the aire, and to meaſure a flies foote: for theſe blind puppies, follies naturall children, *melius, peius, proſit, obſit, nihil vident niſi quod lubet*<sup>g</sup>. But who liſt to know the maners and practizes of the people more fully, let him bend the right eye of his mind to hiftoricall contemplation, then he may ſee *Verres* accuſed and conuicted of diuers villainies, of notable ſpoyles and robberies, of a thouſand exceſſiue briberies at the leaſt, & falſe iudgements in number more: yet by plebiſcite or popular

<sup>f</sup>) Ouid. in  
Metamorph.

<sup>g</sup>) Terenti.

## The sixth Chapter.

popular determination to be quitted and freed, but by the sentence of the same Iudges, *Rutilius*, *Mezcellus*, *Coriolanus*, *Scipio* the elder, *African*, and *Cicero*, men of rare vertues, are confined and banished out of *Rome*: innocent *Hermodorus* is thrust out of *Ephesus*, *Aristides* chased out of *Athens*, *Themistocles* dieth in exile, *Socrates* endeth his life in prison: so vniust a measure to good deserts is the fantasie of the multitude. *Phocion* a mirror of integritie, the glorie of his time, and the honour of *Athens*, who was fortie and five times chosen by the earnest desire of the people to be their chiefe Captaine, which he administred to the great good of that estate: yet in the end they condemned him to death<sup>h</sup>. But *Anipphon* that vicious varlet, and steigne of *Athens*, was by the people absolued and acquitted, as altogether innocent: which absolution *Demosthenes* not brooking, did so hotely pursue the matter, that he caused him afterward to be condemned, and put to death by the decree of the *Arcopagites*<sup>i</sup>. And alas, what praise can there be giuen to the people for any action commenced and caried by them? did *Rome* flourish by popular effectes? no, *Salust* saith that the credit thereof belonged to some fewe excellent gouernors<sup>k</sup>. *Linie* saith, *Sub umbra Scipionis urbem terrarum dominam latere, natus eius pro decretis patrum, pro populi iussis esse: Vnder the shadow of Scipio the Citie, the Ladie of the world did cabbon, his beckes were the decrees of the Senate, the com-*

h) Plut. in  
Phoci.

i) Plut. in  
Demosth.

k) Salust in  
princip. Ca-  
tul.

## The sixth Chapter. 32

*commandes of the people*<sup>l</sup>. So did the *Thebane* state <sup>l) Lini. lib. 30.</sup>  
 a long time flourish, but it was by the wisdom of  
*Pelopidas*, *Epamondas*, and other speciall men. So  
 the *Athenians* hauing lost their prudent gouernor  
*Pericles*, they lost the true and essentiall forme of  
 their Citie, which being as a ship in the midst  
 of the sea, without mast and rudder, whilest one  
 casteth the anchor, an other spreadeth the sayle,  
 one keepeth the hauen, an other mooueth the  
 sterne, all goeth sodainlie to wracke <sup>m</sup>. Foolish <sup>m) Polyb. lib. 6.</sup>  
 were the *Argentinians*, *Lindouians*, they of <sup>lib. 6.</sup>  
*Seene*, they of *Genoway*, they of *Florence*, who  
 seeking to settle popular gouernement, did pluck  
 vp from the roote their auncient nobilitie, and  
 hauing made three degrees of Citizens: some  
 great, some meane, some vulgar; They of the  
 two last rankes did vtterlie subuert the gouerne-  
 ment of the first, and then contending amongst  
 themselves, did burne in such furie one against  
 an other, that streames of blood did run in the  
 streetes, and the state being now couched, and  
 deuolued to the dregges of the people, they neuer  
 left of killing and slaughtering, till by the aduise  
 of the *Pope*, and the neighbour-cities, they had  
 wholie submitted themselves to a straunge go-  
 uernour <sup>n</sup>. Thus in the end they came to a Mo-  
 narchicall estate. And these Nations which haue  
 no resemblance of a citie in them, do create a  
 Duke or Capitaine, who may gouerne the rest,  
 and prescribe Law vnto them: as in *Guzula* a  
 region

n) Antonin.  
 et Machuael.  
 in hist Flor.

## The sixth Chapter.

region of *Affrike*, and in the borders of the kingdome of *Fex*: They that dwell neare the mountaine of *Maguano*, if they perceiue any straunger passing by, who excelleth in wisedom, they doe entreat him, or enforce him if entreatie will not serue, to deuise Lawes for them \*. The *Romanes* in all their daungerous accidents did acknowledge the gouernement of one to be the best, and therefore chose a Dictator, whose gouernement *Appian* pretilie calleth *regnum negatiuum*, either because it denied a regall power onely in shew, or because he had authoritie to denie that which the rest had affirmed. *Trepidi patres* (saith *Liui*) *ad summum auxilium decurrunt, dictatorem dici placuit* p: And againe he saith, that when *Hanniball* did molest *Italy*: *ad dictatorem dicendum remedium iamdiu desideratum ciuitas confugit* q, and such was the reuerence of the Dictator, that, as the same *Liuy* saith, *Dictatoris edictum pro numine semper obseruatum* r. And *Appian* being *Consull*, giueth aduise to create a Dictator for the brideling of the rage of the people, affirming *minas esse consulum, non imperium, ubi ad eos qui una peccauerunt prouocare liceat, agendum Dictatorem a quo prouocatio non est, creemus* s. But Monarchie hath been imbraced by the people of all Nations, Democracie reiected: as namely, by the *Medes*, *Persians*, *Agyptians*, *Parthians*, *Macedonians*, *Arabians*, *Indians*, *Aethiopians*, *Scythians*, *Tartarians*, *Turkes*, *Danes*, *French*, *Mosconites*, *Polonians*, *Britanes*,

o) *Leo Afer*.  
in *lib. de reb.*  
*Affric.*

p) *Liui. lib. 6.*

q) *Liui. lib. 22.*

r) *Liui. lib. 6.*

s) *Liui. lib. 2.*

## The sixth Chapter.

33

ranes, Affricanes, and Persians. The name of a king saith Salust, is *primum in servis*. By scripture it appeareth, that kings were ordeined of God: for it is said in *Deuteronomie*: *Thou shalt make him king over thee, whom the Lord thy God shall chuse: one from among thy brethren shalt thou make King over thee, and thou maiest not set a straunger over thee, which is not of thy brethren*. And it is said of *Moses*: *He was in Israel as King when the heades of the people, and tribes of Israel were gathered together*.

t) Deuteron. 17. ver. 19.

u) Deuteronom. 33. ver. 5.

And after the returne of the Hebrewes from *Babylon*, where they were captiues, to their auncient countrie of *Palestine*, they did obey the kinges of *Persia*, *Syria*, or *Egypt*, till *Iudas Machabeus* an *Asmonite* did recoyle from *Antiochus* the great king of *Syria*, and transferred the high-pristhood and kingdome into his owne familie. And as all Nations haue imbraced Monarchie, so the wisest men in all nations haue approoued it: As *Homer*<sup>a</sup>, *Herodorus*<sup>b</sup>, *Plato*<sup>c</sup>, *Aristotle*<sup>d</sup>, *Xenophon*<sup>e</sup>, *Plutarch*, *Philo*<sup>f</sup>, *Apollonius Thyanaus*<sup>g</sup>, *S. Ierom*, *S. Cyprian*, *Maximus Tyrius*<sup>h</sup>, and *Bartolus* the deepe Ciuilian<sup>i</sup>, *Lucan*<sup>k</sup>, *Aquinas*<sup>l</sup>, *Erasmus*<sup>m</sup>, *Tacitus*, *S. Augustin*<sup>n</sup>, and *S. Ambrose* whose particular and plenarie assertions I omit, because I hasten now to an other matter which hath not been so much discoursed of as this.

a) Homer. lib. Iliad. 1.

b) Herodot. lib. 5.

c) Plat. in politic.

d) Lib. vlt.

Metaphisic.

e) Xenoph. in cyrop.

f) Plat. in lib. de creati. Regis.

g) Philostratus. h) Maxim. Tyri. in orat. i) Bartol. in tractat. de Regim. ciuit. nu. 10. k) Luca. lib. 1. et 2. l) Aquinas in lib. de princip. m) Erasim. in lib. de instit. princip. n) D. Augustin. lib. 5. de ciuit. dei c. 1.

K

The se-

## The seventh Chapter.

*Of the Law and Iustice of Armes, of Leagues, of Embassages, and denouncing of Warre, of Truce, of Safeconduitt, Captines, Hostages, Stratagems, and Conquestes, according to the Law of Nations.*



N purposing to speake at large of the Law of Armes, and the members and parcels thereof, I doe respect the good of the Ciuilian, who in these matters is verie often employed: And of the professors of common Law, who shall not doe amisse, in considering of these things that shall be deliuered, for the more full opening and explaining of the Statute of 13. Rich. 2. cap. 2. which is thus: *To the Constable and Marshall it belongeth to haue consens and knowledge of contraites, touching feates of Armes, and of warre, out of the Realme, and also of such things as touch Armes or Warre within the Realme, which can not be determined, nor discused by the Common Law &c.* For the better entring into this discourse, I thinke it best to begin with the definition of Warre, which may be thus: *Warre is a iust conuention of men armed for a publike cause*, for though manie things be done in warre without weapons, yet there is no warre without the furniture

*Belham  
q. uiv.*

## The ſeuenth Chapter. 34

ture of weapons, and there is nothing in warre which doth not lie hidden as it were vnder the ſafegard of Armes, and which may not be referred to the ſame: And it muſt be a publike contention, becauſe warre is not the quarrelling fight and enmitie of priuate men: for warre is therefore called *Duellum*, becauſe it is the contention of two equall perſons <sup>a</sup>: And therefore the *Syrians* (as I am informed) doe thus <sup>a) Varr. lib. 6. de lingu. lati.</sup> translate the wordes of our Sauour: *What king goeth to warre againſt an other king* <sup>b</sup>, in this forme: <sup>b) Luc. 14.</sup> *What king goeth to warre againſt his fellow king*: that is an other king equall vnto him: Therefore *Lipsius* his definition is to bee diſliked, in that he defineth, *Warre to bee force and armes againſt a ſtraunge Prince or people* <sup>c</sup>: for by that <sup>c) Lipſ. in po- lit.</sup> hee maketh the outrage and violence of priuate men and pyrates to bee warre: for waire is a iuſt contention, and by this woord (*iust*) *excursions and depradations are excluded*: Wherefore *Scipio* did accompt them robbers and ring-leaders to theefes, which did deale by ſuch kind of ſpoyle and pillage <sup>d</sup>. And *Liue* cenſureth <sup>d) Liui. lib. 28. 40-41. Flor. 2.</sup> the *Ligurians* rather to be robbers then iuſt enemies, becauſe beeing poore at home, they did inuade the dominions of others, and were more eaſilie ouercome then founde out: Neither did they obſerue the Law of Armes, becauſe they did ſlaie captiues, and cruellie diſmember them. And *Iouins* ſpeaking of the truce betwixt

## The seventh Chapter.

the *Turkes* and *Hungarians* saith, that by an ancient custome, they did make small skirmishes and extraordinary incursions upon the borders, if they were not resisted by the preparation of Ordinance planted against their walles<sup>e</sup>. Warre was first brought in by necessitie, for in that decisions of Courtes of Law, and the determining of controuersies by their rules, could not be betwixt two straunge Princes of equall power, vnlesse they should willingly agree to such an order, because they haue no superior nor ordinarie Iudge, but are supreme, and publike persons: therefore the iudgement of armes is necessarie because such warre (saith *Demosthenes*) is against them which can not be bridled by Law<sup>f</sup>; But proesse of suit is onelie for them which are subiect: For as there be two kindes of contention; one by triall of Law; the other by triall of Armes: so we may not vse the later, if we may haue helpe by the former. This was the cause that the *Romanes* were wont to mooue them, with whom they dealt, that their quarrels might be ended by mutuall debating, and course of iudgement, rather then by blowes, and weapons. And so the *Ardeates*, and *Aricines*, the *Neapolitanes*, and *Nolanes* did referre their controuersies to the iudgement of the *Romanes*<sup>g</sup>. So the *Samnites* did prouoke the *Romanes* to debate their comon cause betwixt their common friends<sup>h</sup>. And *Archidamus* said, that it was not lawfull to wage battaile against them which

e) Ioui.lib.  
36.

f) Demosth.  
de Cherfon.

g) Lini. 3.  
Dionys. vlt.  
Cicer. 1. de  
offic.

h) Lini.lib.8.

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which did offer themselves to bee ordered by  
 peaceable iudgement: <sup>1</sup> and *Cyrus* who is propo- <sup>i) Thucid. l. 1.</sup>  
 sed as a patterne of an excellent prince, by *Xeno-*  
*phon*, a principall Philosopher and very wise Go-  
 uernor maketh the king of the Indians an Vmpier  
 betwixt himselfe, and the Monarch of *Asiria*: <sup>k) Xenoph.</sup>  
 therefore they which flie from this peaceable kind <sup>Cyropæd. 2.</sup>  
 of triall, which is nothing els but a dissection of  
 of words and reasons do digresse from iustice, hu-  
 manity, & commendable examples: but it is good  
 to bee prouided for armes, when the parties will  
 not tollerate indifferent hearing of the cause,  
 which the poets seeme to haue signified when  
 they feygned *Chiron* the Centaure, whose vpper  
 part did resemble a man, the inferior part a horse,  
 to be tutor to *Achilles*, <sup>l</sup> that they might giue vs to  
 vnderstand, that when a controuersie could not <sup>l) Statius</sup>  
 be moderated by reason, the strength of the horse <sup>Achilles lib. 2.</sup>  
 should be vsed: for against them, which will not  
 be ruled by equitie and reason, force is not vniust.  
 But (as *Scipio* said a gouernor in warr ought like a  
 Phisitian to vse iron and launcing in the last place;  
<sup>m</sup> And as to the bearing of armes, it is certaine &  
 manifest, that priuate men, and people subiect, and <sup>m) Plut. in</sup>  
 inferiour princes, haue no such necessitie to make <sup>apophth.</sup>  
 triall by battaile, because they may pursue their  
 right by other lawfull meanes in some court of iu-  
 stice: neither haue priuate men any authority to  
 assemble a multitude. It is *Platoes* law, *Si quis pri-*  
*uatis sine publico scitu pacem turbauit fecerit capital*  
*esse*

## The seventh Chapter.

- n) Plut. lib. vii. *esto: a* If any man priuately without publike knowledge  
delegi. doe make warre or peace let it be capisall vnto him: for  
it belongeth to the power of the supreme gouernor to
- o) Deci. cong. make warre or peace: ° and therefore by the law of  
20. *Iulius* it was high treason for any to leuie armes  
without the consent or command of the prince, &  
p) l. 3. ad l. Iu. & the Romanes did thinke it conuenient to yeeld  
ma. such a man into the hands of them whom hee had  
prouoked by weapons: ° and vpon such oc-  
q) Appian. & casion they demanded the person of *Annibal*: and  
Plut. in cat. mi. so the Philistines vpon like cause demaunded  
r) Iudic. 15. *Sampson*, to whome the Iewes yeelded him; ° and  
*Cato* thought that the army was to be recalled, &  
*Casar* to bee yeelded vp into the enemies power,  
because he maintained warre in *Fraunce* without  
the warrant of the people, in whose handes the  
commandement of warre and peace was: ° but  
s) L iul. lib. 4. without vrgent cause and lawfull authoritie there  
16. 18. 19. should be no taking of armes or rayfing of multi-  
tude, & therefore it is well prouided by the statutes  
of the two soueraigne Queenes & sisters, *Marie* &  
*Elizabeth* of England: That no man without autho-  
ritie, by ringing of any bell, or by sounding of any  
drumme, trumpet or horne, or any other instrument,  
by the fiering of any beaconn, or any other instrument,  
Ec. with force and armes shall alter any lawes or sta-  
tutes. ° And in ancient times kings had the supre-  
e) 1. Mari. par- macie ouer other, of commaunding or commen-  
liam. l. c. 12. cing war, and of mustering men, as appeareth by  
1. Eliz. c. 7. the sacred historie. Yet sometime vpon a great or  
n) 1. Reg. cap. 8. necessarie cause, as if there be daunger in delay, or  
the

## The ſeuenth Chapter. 36

the ſoueraigne prince be abſent, warre may be vnder-  
taken without the commaundement of the  
prince, if it be vpo occasion of iuſt defence, which  
by the law of nature is graunted to euery one, and  
there is an excellent example to this purpoſe in  
the Romane hiſtory of *L. Pinarius*, who was the  
captain of a gariſon at *Enna* in *Sicely*, who whē he  
did foreſee the reuolt & defection of the citizens  
of *Enna* to the Carthaginians, and hee could not  
conueniently ſend ambaffadors to the Conſul  
*Marcellus*, though he were not far frō thence, ſud-  
denly he did kil all the citizens, by which act *Enna*  
was ſtill reteigned for the Romanes, & *Marcellus*  
did not diſallow the deed: <sup>a</sup> therefore *Cicero* com-  
mendeth the enterpriſe of *Oſtanius Caſar*, who not  
expecting the decree of the Senate, did of his own  
head vndertake war againſt *Antonius*: for the time  
of cōſultation was not yet come, but if he had thē  
omitted the time of battel, he did well foreſee that  
the cōmon weale being oppreſſed, nothing could  
bee decreed by Senate: <sup>b</sup> and the Senate did after  
allow by publike authority the war vndertakē by  
*Oſtanius* of his owne priuate aduiſe: <sup>c</sup> ſo *Scipio Na-*  
*ſica* did deſerue exceeding cōmendation, who did  
voluntarily offer himſelf a captain to all good Ro-  
mans for the oppreſſing of *Ti. Gracchus*, together  
with his treacherous confederates. <sup>d</sup> For it is ne-  
ceſſarie (as *Cicero* ſayth) in ſuch perturbation  
and tumult rather to obey times then cuſtomes:  
for in peace wee muſt follow cuſtome, in warre  
profite: but nowe as to the iuſtice of warres,

if

a) Lini, lib. 24.

b) Cice, Philip.  
pic. 8.

c) Cic, Phi-  
lip. 5.

d) Valeri.  
Maxi, lib. 3. c. 1  
Appi, de bel,  
cui. lib. 1.

e) lib. 2. de rep  
c. 5.

## The seventh Chapter.

*is bellum* haue his denomination *a belluis*, as some doe imagine, it should seeme to be vndecent and discrepant from the nature of man. Heare of that matter *Seneca*: Wee punish homicides and particular murders, why doe wee not punish warres and the glorious sinne of people slaughtered. Conetousnes & crueltie know no measure: By Senate-counsell and popular assent bloody actions are executed and publikely

f) *Senec. epist. 96.* commaunded, which are priuately forbidden. <sup>f</sup> Men, a mild kind of creature, are not ashamed to boast of

• bloudshed, when as dumbe and reasonlesse creatures haue peace amongst themselves. <sup>g</sup> And at

g) *Cuius Critic. not. 1. & c. 2. de cla. desp. Lips. 2. mili. Rom. 12.*

the first sight this is a great argument, that if dumb creatures, which can not debate the causes of their • anger haue peace amongst themselves, how much more ought men to doe the like, vnlesse they will • be more beasts then the beasts themselves. *Cyprian* hath the like saying: *Homicide when particular men doe it is accompted a fault: when it is publikely done it is accounted a vertue the greatnes of crueltie not the reason of innocencie doeth purchase impunitie and pardon.* And fitly to the same purpose, though not purposely for the same: *Laves* haue agreed to sinnes, and that is admitted to bee lawfully which

h) *Cypr. 3. ep. 2* is publike: <sup>h</sup> And *Seneca* againe, *Small thefes are punished, great are caried in triumph.* <sup>i</sup> *Tertullian* saith, that wrong is proper to warre, and as farre as his authoritie stretcheth, prohibiteth battaile to

i) *Senec. ep. 88*

k) *Tertullian. adu. Iud.*

Christians: <sup>k</sup> but sithence the time of *Tertullian*, these opinions haue beene confuted of Diuines, Ciuilians;

## The seventh Chapter. 37

Ciuiilians, and Philosophers : for warre is according to lawe though many mischeefes do steigne it : for there doeth ensue good of it when rebels are reduced to obedience, and when peace is accorded : and that whose end is good, is also good it selfe : for the end of war is peace, to which and to common equitie without bloudshed, and these iniuries of warre men do seldome attain. Neither doth *Seneca* disallow all warres: for he praiseth the warres of *Hercules* : <sup>1</sup> as to *Tertullians* saying, hee <sup>h) Senec. lib. 2. de benefici.</sup> did speak it vpon the consideration of such things which are vniust, and are often done in warre, not impeaching that which is vsually done of them that be iust: to *Laetantius* & *Cyprian* answer may be made after the same sort. Notwithstanding I would not haue this poyson of war admitted in- <sup>m) Conua. reg. peccat. S. 18. Soto. 5. de iust. q. 1. 7. view. relect.</sup> to any commonweale, vnlesse it be to expell another poison : nor this furie to be let loose, vnlesse it bee to coole the furie of others, or vpon like necessitie. But now let vs sift the precedent definition of warre more narrowly, and consider how warre may bee iustly maintained on both sides : which both Diuines & Ciuiilians <sup>m</sup> haue thus expounded, saying that it may bee truely and verily iust on the one side, & on the other by ignorance, as by the voice of God the Iewes did iustly moue warre against the Cananites, and the Cananites did iustly resist the Iewes, not knowing God his will and defending themselues : and therefore it was well said of Pope *Pius* the second to the em-  

L
bassadors

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baſſadors of the king of *Hungarie*, who did ſpeake againſt the Emperour, that he thought the king of *Hungarie* would not depart from right and reaſon, and hee knew likewiſe that the Emperour was a loue of iuſtice, howſoeuer nowe they did diſcent by warre, and that neither of them thought that hee had an vniuſt cauſe of warre. <sup>n</sup> *Cice-ro* ſpeaketh fittely to this purpoſe. of the faction of *Caſar* and *Pompey*: *There was ſome obſcuritie, there was variance berwixt two excellent Captaines: many doubted what was the beſt, many what was expedient for them, many what was decent, ſome, what was lawfull:* <sup>o</sup> but the Ciuil law doth attribute the rightes of warre vnto both parties, the things that be poſſeſſed by warre it giueth to the poſſeſſor: captiues it maketh bondſeruant to both. Now it is conuenient to diſcend into a more particular conſideration of the cauſes of warre, which muſt not be attempted onely vpon an immoderate deſire of enlarging dominions or increaſing riches. *To aſſault thy neighbours by warre (ſaith Auguſtine) and to vex people that doe thee no hurt through an ambitious deſire, what is it els but a great robberie.* <sup>p</sup> Therefore the ſaying of the Barbarian was as barbarous as himſelfe: *That is moſt iuſt in prosperous fortune, which is moſt forcible, and what is belongeth to a maſter of a familie to keepe his own but to a king to comend for that which other men poſſeſſe.* But *Attila* which did not attend any cauſe or occaſion of warre, did therefore worthely deſerue

n) Com. Pij.  
2. lib. 3.

o) Cice. pro.  
Marcel,

p) D. Auguſt.  
m. 4. de ciui-  
tat. Dei.

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ſerue the hatred of all men as being an enimie to all men: but the Turkes do otherwiſe, who moſt commonly pretend a cauſe of warfare: and therefore *Soliman* when hee endeououred to winne the kingdome of *Cyprus* from the Venetians beganne to conſider what pretences he might make for the taking of armes, becauſe it is not (as one ſaith) the cuſtome of the Ottomans vpon a rage or heate of mind to enterpriſe warre. <sup>q) Tact. Ana- li. 15.</sup> It is a beaſtly part ha- <sup>r) Ior. de or.</sup> uing receiued no iniurie, to commit ſlaughters of men, and depopulations of cities and countries: therefore princes many times pretende cauſes of war, where in truth there is no cauſe. And *Moyſes* fought for a good cauſe of quarrelling with the Emorites, though hee had a cauſe abſolutely iuſt, namely the commandement of God. For when by vertue of the ſame commandement he was to make warre againſt the Emorites, & vtterly to deſtroy them, hee ſent meſſengers to their king which might ſignifie thus much: *I will paſſe by thy land, we will not turne into thy field nor vineyard, nor drinke the water of thy well, wee will keepe the right path untill we be paſt thy borders.* Therefore let there be a cauſe of warre, and let it be no ſmall cauſe: for *parum a nihilo vix diſtat*. And as *Propertius* ſaith: <sup>o) Natal. com. lib. 1.</sup>

*Frangit & attollit vires in milite cauſa,  
Qua, niſi iuſta ſubeſt, excuſis arma pudor.*

## The seuenth Chapter.

Iust cause of warre is the defence of our countrie, our selues, our friends, our fellowes, & goods.  
 A defensiuē warre is grounded vpon the lawe of Nature, therefore *C. Pontius* the Captaine of the Samnites said well, *That warre was iust vnto them, to whom it was necessarie, and that their armes are honest which haue no hope of safetie but in weapons.*

2. Likewise it is a iust warre which is taken in hand for the recouerie of things wrongfully, and by force taken from vs by our enemies: <sup>a</sup> or that the authors of the iniurie, at least, may be yeelded vp into our hands to bee punished, if they did it not by publike decree, but by priuate malice: therfore *Dauid* after the death of *Saule* did maintain warre against *Isboseth* the sonne of *Saule*, who did go about to vsurpe the kingdome of *Israel*, which God by *Samuel* the Prophet had giuen vnto *Dauid*: <sup>u</sup> and *Romulus* did therefore fight against the Sabines, because their *Dictator Cluitius* would not restore the things taken from the Romanes by violence, nor yeelde vp into his handes them that did wronge. <sup>a</sup> And the reuenge of an iniurie most despightfully done, is likewise a good cause of warre: Therefore *Dauid* did iustly wage battell against the King of the Ammonites for the disgrace and abuse offered to his ambassadors: <sup>b</sup> and that prince hath iust cause of warre, who pursueth by armes rebelles and such as swaue from obedience: <sup>c</sup> for great iniury is done to God, and to the prince, when his subiectes will not

<sup>e</sup>) c. iustum. q. 2.  
 August. q. 10.  
 sup. Iosu. lib. 2.

<sup>u</sup>) 1. Reg. c. 2.

a) Dionis. Halicarn. lib. 3.

b) 1. Regu. c. 20  
 & duob. sequenti.  
 c) c. auctor. it.  
 vs. quæsti 6.  
 cap. scir. 103.  
 quæsti 8.

## The ſeuenth Chapter. 39

not be ordered, nor ruled by his authoritie: for there is no power but of God, and he that refisteth power as S. Paul ſaith, refisteth the ordinance of God<sup>d</sup>, and the iniurie done to a ſoueraigne Magistrate, is done vnto God: Who ſaid vnto *Samuell*, of whom the people craued an other king: *They haue not caſt off thee, but me, that I may not reigne ouer them<sup>e</sup>*. And *Dauid* did wage battaile againſt *Seba* the ſonne of *Bochri*, who ſolicited the people to reuolt from *Dauid* to him<sup>f</sup>. But be-  
 cauſe a Rebelle may not properlie be called an enemy, when any ſuch armes are borne againſt rebels, it is not to be called a warre, but an exerciſe of princelie iuriſdiction, vpon traiterous and diſ-  
 loiall perſons<sup>g</sup>, which was well declared by *Pompey*, in iuſtifying the warre maintained by the Senate againſt *Caſar*, and his complices<sup>h</sup>:

<sup>d</sup>) Ep. ad Roman. c. 13.

<sup>e</sup>) 1. Reg. c. 8.

<sup>f</sup>) 2. Reg. c. 20.

<sup>g</sup>) Innocent. in c. olim 1. de reſti. ſp. et l.

<sup>h</sup>) Lucan. lib. 2.

*nequē enim iſta vocari  
 Prælia iuſta decet, patria ſed vindicis iram.*

And this is confirmed by *Ciceroes* opinion, who did not think it conuenient to ſend Embaſſadors to *Anthonie*, nor to intreat him by wordes, but that it were meeete to enforce him by armes to raiſe his ſiege from *Mutina*: for he ſaid that they<sup>i</sup> ſhould not now to deale with *Anniball* an enemy to their common weale, but with a rebellious Citizen<sup>i</sup>. And the ſaid *Cicero* writeth alſo to *Plancus*, that peace ought not to be concluded with the *Anthonians*, who had beſieged *Brutus* at *Mutina*, calling them ſhamefull theefes, which either ought to

<sup>i</sup>) Cicero. philipp. 3.

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k) Cicer. lib.  
10. epistol.  
episto. 6.

crave peace, laying aside their Armour, or if they will persist in their furie to obtaine it by fight, not by composition<sup>k</sup>: Wherefore it was vnaduisedly done by the late Earle of *Essex*, in admitting anie article of composition with *Tyrone*, and namelie for the restitution of such landes and possessions, to which the Rebels might pretende right before the rebellion: for so vpon euery iudgement giuen against them, they would presentlie haue retourned to weapons. And this slipperie reuolution of titles, might perhappes haue stirred them to Armes, who were in peaceable possession of these lands: so that this would haue been nothing else, but a cutting off of one of the heads of *Hydra*, that an other might growe: for surelie there will alwayes bee some cause and occasion of tumult, if men may bringe into question, *antiqua et antiquata*. The *Romanes* would graunt nothinge at all to Rebelles, beecause theyr course was to bee sterne to the proude, and rebels in that they are rebels are proude in the highest degree: Neither ought anie of their kinned to regarde them, but to bee of *Seneca* his resolution: *Si arma quis parua mea inferret, quidquid de me meruerat perdidit, & referre illi gratiam scelus haberetur*<sup>1</sup>. And excellent is the saying of *Fredericke* the second to the *Fauentines*: *Qui dum potest delinquit, dignus est re-*  
quan-

1) Senec. lib.  
vlt. de beni. fi.

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*quantum potest puniatur*<sup>m</sup>. But to returne to the causes of Warre; There be some causes of making warre, which wee referre to God, as commaunding warre; as when the *Jewes* did referre to God the cause of the warre mooued against the *Cananites*<sup>n</sup>. And God denounceth irreconciliable warre against the *Amalekites*, and he chargeth his people with perpetuall enmitie against them<sup>o</sup>. *That kinde of Warre* (saith *Augustine* is without all doubt iust, which God doth commaunde, vvhich whom there is no iniquitie, and vvhich knoweth vvhich ought to bee done to euery man, in vvhich action the armie is not so much to bee accompted the aushour of vvarre, as the minister thereof<sup>p</sup>. And so the Prophet *Esaie* said, that it was not necessarie for king *Ezechias* to aunswaere anie thinge to the Embassadours of the *Philistines* of the *Israelites* right in *Palestine*, but onelie this, *That God vvould haue that land to bee his peoples*<sup>q</sup>: Naie, the verie Heathen as the *Aethiopians* did vnder take euery warre by the Oracle of *Iupiter*<sup>r</sup>. And the *Spartanes* by lottes and miracles, were mooued to make warre and to fight with the *Argines*<sup>s</sup>. And *Aeneas* commeth into *Italie* to maintaine warre by destinies, and Oracles<sup>t</sup>. And the *Turkes* doe alwaies pretende this cause of their warre, that it is the commaundement of *Mahomet*, that they should persecute men of diuerse Religion: there-

<sup>m</sup>) Sigoni. lib. 18, de re. Itali.

<sup>n</sup>) Deut. 34. 4. Exod. 23. 29. Num. 33. 51. Deut. 10. 16. 17. 18.

<sup>o</sup>) Exod. 17.

<sup>p</sup>) August. in Ios. q. 10.

<sup>q</sup>) Eli. 15.

<sup>r</sup>) Herodot. lib. 2.

<sup>s</sup>) Xenoph. 4. Græc.

<sup>t</sup>) Nat. com. 6. 14.

## The ſeuenth Chapter.

therefore they and the *Persians*, the one ſeeming  
 hæreticall to the other, are in continuall warre.  
 And the late king of *Spaine Phillip*, did pretende  
 this defence of his warres (as ſome teſtifie) that  
 they were againſt Infidels, and Heretikes \*. Yet  
 a Doctor of his owne ſect *Baltasar Ayala* thinketh  
 that warre is not to be leuiued againſt Infidels, be-  
 cauſe they be Infidels, although the Emperor or  
*Pope* ſhould commaund it: for their infidelitie  
 doth not deprive them of theſe demefnes, which  
 they haue by the Law of Nations: for the earth  
 was not giuen to the faithfull onelie, but to euery  
 reaſonable creature: for the earth is the Lordes,  
 and the fulnes thereof, the round world and who-  
 ſoeuer dwell therein \*. And the Lord maketh his  
 Sunne to ſhine both vpon the good and the bad †,  
 and though *Nabuchadnezer* were an Infidell, yet  
 the Lord did giue vnto him kingdome and prin-  
 cipalitie ‡. But in grounding warre vpon diuine  
 cauſes, it is good to be certaine of God his will,  
 and not to credit the æquiuoall prophecies and  
 fantasies of men light-headed and poſſeſt of fierie  
 ſpirits, fit to kindle tumults and vproyes: for the  
 warrants of ſuch men are nothing els, but the  
 wracke of a number of men. Such was the oracle  
 of that *Scor* vnto his king, conſulting with him  
 of warre againſt *England*, *Ibis, redibis, nunquam in*  
*bello moriturus*, which fell out afterward to be  
 true, being thus diſtinguiſhed: *Ibis, redibis nun-*  
*quam in bello moriturus*. Such was the warrant of  
 the

u) Ferrar. de  
 inimic. §. 7.  
 et 17.

iii) Baltas.  
 Ayal. lib. 1.  
 de iur. bel. c.  
 2.

x) Genes. c. 1.  
 Exod. 9. 29.  
 Pſal. 14. 1.

y) Math. 5. in  
 fin. et c. 6. in  
 princip.

z) Ierem.  
 27. 6.

## The ſeuenth Chapter. 41

the Eremit, moouing the imperiall armie to fight  
againſt the *Ligurians*<sup>xx</sup>. Such were the fond pro-  
phesies of *Ball*, or according to ſome Chronicles  
*Wall* a prieſt, who ſtirred vp a rebellious armie in  
the time of king *Richard the ſecond*<sup>xxx</sup>. But from  
warres which diſplaie the banner, I will paſſe to  
leagues which wrap it vp : 2. As warres haue  
been by the Law of Nations mainteined, ſo lea-  
gues haue been concluded : for as *Cicero* ſaith :  
*Ita bellum ſuſcipiatur ut nihil aliud quam pax qua-  
ſua videatur*<sup>a</sup>. Such was the opinion of *S. Au-  
guſtine*, as appeareth by the Canon Law : *Pacem  
habere debet voluntas, bellum neceſſitas : non enim  
pax quaritur, ut bellum excitetur, ſed bellum geri-  
tur ut pax acquiratur*<sup>b</sup>. And that is expedient for  
the Conqueror, according to the ſaying of *Euri-  
pides* : *Pacem reduci velle victoria expedit, victo ne-  
ceſſe eſt*. But the Conqueror ought to be of that  
power, that he may be able to make perpetuall  
peace : for it is one of the naturall properties of  
peace to be perpetuall : For ſuch was the forme  
of peace, which the *Romanes* concluded : *Roma-  
nis & Latinorum populis pax eſto, dum cælum et  
terra ſtationem eandem obſtinent*<sup>c</sup>. And ſo the *Ro-  
mane* Emperour, and the *Persian* king did eſta-  
bliſh peace *ſine termino*<sup>d</sup>, in concluding peace,  
publike profit muſt be eſpecially regarded, which  
*Hanniball* therefore tearmed *vinculum maxi-  
mum*<sup>e</sup> : and before him *Demosthenes* tearmed it  
ſo<sup>ee</sup>. And ſometime priuate profite is reſpected,

M

when

xx) Carol. St-  
gon in vit. An-  
dr. Anri.

xxx) I. Stow  
in Rich. 2.

a) Cicero.  
1. offic.

b) C. 3. 23.  
q. 1.

c) Dionys.  
Halicarnaſ.  
lib 6.

d) Procop. 1.  
lib. de bel.  
Perſ.

e) Lini. 36.

ee) Demosth.  
ad Ep. Phi.

## The seventh Chapter.

when it is a mean or waie to publike profite:  
 Wherefore Duaren saith pleasantly and tidie: We  
 see verie often, that as of a comedie, so of a warre,  
 the small conclusion is a marriage<sup>f</sup>: But it is good  
 to make peace, so that there be no feare of fu-  
 ture tumult, and vnquietnes: Therefore Len-  
 tulus his counsaile was good against the Cartha-  
 ginians: *Quoniam perfidiam non possumus tollere,  
 ante omnia debilitemus potentiam*<sup>g</sup>: And Cato of  
 this matter speaketh to the Spaniards: *Id ne fiat  
 vno modo cauere potest, si effectum erit ne possint  
 rebellare*<sup>h</sup>. And Iphicrates doth well aunswere  
 the Lacedamonians, promising all faithfulness,  
 and all possible securitie, that he could not rest  
 vpon anie other faith, or other securitie then  
 this, that it should bee apparant vnto him, that  
 they could not doe anie hurt, though they  
 would. The reason of this sure and warie dea-  
 ling with enemies, Saint Ierom wittilie shew-  
 eth: *Quis vnquam mortalium iuxta viperam secu-  
 ros somnos capit, qua etsi non percutiat, certe sol-  
 licitat: Securius igitur est perire non posse, quam  
 iuxta periculum non perisse*<sup>i</sup>: Who did euer rest  
 quietly, sleeping neare to a Viper, which though shee  
 doe not stinge, yet shee doth vex? It is therefore more  
 secure to be able to auoide danger, then not to haue pe-  
 rished, where there is hazard of perishing. The effects  
 of peace concluded are diuerse, for either wea-  
 pons are laide aside, or the parties agree vp-  
 on

f) Duar. c. 3.  
 de rit. nup.

g) Appia. in  
 bel. punic.

h) Liui. 34

i) Hieron.  
 p. 47.

## The seventh Chapter. 42

on condition, or the fight receiueth some restraints, or limitations: for when both parties are wearie, both of paines and of expence, this is rather an ending of warre, then a concluding of peace; as *Tacitus* saith in the like case: *Bellum magis desierat quam pax caperat*<sup>k</sup>. And the like matter *Cicero*, in the like sort censureth: *Summum otium sed senescens magis ciuicis quam quiescentis*<sup>l</sup>: Wherefore it is good to make and ratifie perseuerance of peace, beecause the reliques of the disease after the *crisis* doe manie times worke the ruyne and subuersion of our health. And according to the rule of *Phisicke*: *The ashes of purified bodies will soone inflame the humours*<sup>m</sup>: And therefore *Tullus* that artificiall Warriour, in articulating peace with the *Albanes*, putteth them in minde, that they ought not so much to settle present peace, as to prouide for future agreements<sup>n</sup>. And worthelie doth *Isocrates* reprocue the *Grecians*, because they did not compounde, but de-laie enmities, vntill such time as one of them might destroie an other<sup>o</sup>. And excellent is that saying of *Cicero*: *Pax est non in armis posita, at in abiecto omni armorum metu*<sup>p</sup>. But to speake some what of the diuersities of making peace, if this clause bee comprehended in the Articles, *That one of the parties should preserve the Maiestie and aucthoritie of the other with all kindnes and faithfulness*. *Doctor Baldus*

k) Tac. 4.  
annal.

l) Cic. ep. ad  
Qu. fr. lib. 2.  
ep. 14.

m) Hippocr.  
6. epid. 2. et  
Merc. ad 2.  
de mor.

n) Dionys. 3.

o) Isoc. in pa-  
negyr.

p) Cic. 10. lib.  
epist. 1. am.  
epist. 6.

## The seventh Chapter.

- q) Bul. y. conf. 106. tearmeth this *simplicem adhaerentiam*<sup>q</sup>, whereby (as *Romanus* expoundeth it) the weaker part doth adhere to the mightier: *non ut subditi fiant, sed ut defendantur*<sup>r</sup>. This adherence is lesse then protection: and he that is an herent, or vnder protection, is not presentlie vnder iurisdiction, but is onelie defensible from iniuries and violence, and that by souldiers and armour: Wherefore I wonder at *Alciat*, when hee saith, *Federati Latine loquentibus subditi sunt, non forij<sup>t</sup>, aut adhaerentes*. Neither is it any subiection, though they giue somewhat in signe of superioritie<sup>t</sup>.
- r) Rom. conf. 417. Neither were the *Carthaginians* and *Macedonians* subiect to the *Romanes*, though they did paie vnto them a yearely tribute. But if a League be once contracted, it bindeth verie strongelie and effectuellie; and that certaine ministeries or dutifull respectes were by reason of such Leagues due and demaundable, may euidentlie appeare by the League contracted betwixt the *Romanes* and the *Lacedamonians*, wherein it was expressed, that they should liue according to their owne Lawes, and should not conferre anie thing in name of tribute, saue onelie certaine friendlie ministeries, and offices<sup>u</sup>. And for the further prooffe of the straitnes and strength of this publike bonde, this forme of League was found ingrauen in an auncient stone: *Barari fratres, & amici populi Romani*<sup>uu</sup>: So that *Bodinus* is not to be harkened vnto, who thinketh that
- s) Strabo lib. 8.
- uu) Dio lib. 69.
- by

## The seventh Chapter. 43

by freindship or league contracted betwixt nations, no aide is due vnlesse it bee expressly mentioned<sup>a</sup>: for *Baldus* teacheth him otherwise, that there is one bodie of two cities or two common weales, by reason of freindship concluded: <sup>a</sup> but for the better vnderstanding hereof it is to be noted that there be two kindes of societie or publike freindship: one which is tearmed *συμμεχία*, the other which is named *συμμοχία*. <sup>b</sup> *συμμοχία*, is when the parties contracting league are by force of the league to haue the same friends, and the same enemies, which maner of societie was much vsed by the Romanes: the other is but as it were the moitie or halfe part of this, as namely when one of the league is to helpe the other when he suffereth iniurie: but not when hee offereth iniurie for it is a good rule in the ciuil law, *rei turpis societas nō intelligitur*: <sup>c</sup> Therefore he that couenanteth to defend a castell or farelet is not bound, if warre bee raised through his fault, to whome hee made the couenant: <sup>d</sup> and *Castrensis* auoucheth, that this ought to be vnderstood of a necessarie, not of a voluntarie warre: But this is cleare and certaine in this case, that he that is bound so to defend, is bound to defend by weapons: <sup>e</sup> and he that is bound in such case personally to helpe an other is much more bound to helpe him with money <sup>f</sup> yet that must be thought to be onely then required at his handes, when the other can not prouide for his owne necessities. Now it is to be considered, whether

<sup>a</sup>) Bodil. lib. 5.  
de rep. c. vlt.

<sup>a</sup>) Bal. conf. 39

<sup>b</sup>) Suid. Thucyd. 1. Rhod. 11. an. l. c. 6.

<sup>c</sup>) l. 57. vbi  
Bal. pro for.

<sup>d</sup>) Alexand. 3.  
conf. 114.

<sup>e</sup>) Decil. 59.  
de reg. iur. &  
3. conf. 117.

<sup>f</sup>) Alci. 3. conf. 112.

## The seuenth Chapter.

ther eyther of the parties may depart from the league. And I thinke vpon iust occasion such a departure may bee made: *Fedus non violatur si ab eo disceditur ob rationem iustam* <sup>z</sup>: But this must not bee for a light cause: for light causes are alwaies arising: and all contracts would bee most weake, if for a small and worthlesse cause it should be broken or not regarded. But a prince may safely depart frō the league if some part of the league bee broken by the other partie: <sup>h</sup> and leagues as all other contractes bee *indiuina* <sup>i</sup>: for there be alwaies exceptions vnderstoode in euery league as these for example, *Nisi causa superueniat: nisi culpa accesseris eius cui promissio ista fit, & pactio fœderis: rebus sic stantibus*. Thus we haue spoken of warre and peace generally, now it remaineth to discourse of the particular circumstances of these two principall points and moments of a common weale.

g) l. 14. 15. 16.  
pro soc.

h) Cagnol. l. 1.  
41. Cod. de.  
trans.

i) Deci. Conf.  
265. cep. 455.  
461.

k) Deut. 20.  
Ioseph. 5. anti-  
quitat. Aug.  
iudic. q. 49.  
l) Aerod. lib.  
5. Xenop.  
Agel Diony.  
2. Liui. 1.  
m) Cicero. l. de  
off. n. c. l. 23.  
q. 2.

3 Before warre be maintained by one prince against an other, it behooueth him that commeth war to denounce the warre solemnly by ambassadors, and by that meane to certifie him of his purpose. For this course is prescribed by the lawe of God <sup>k</sup>. And it was practised by the Grecians, Barbarians, and most of all by the Romaines <sup>l</sup>. Whereupon Cicero saith, *Nullum bellum iustum haberi videtur nisi nuntiatum, nisi indictum, nisi reperi- tis rebus* <sup>m</sup>: Which saying is cited and auowched

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in the Canon law <sup>n</sup>. And this is likewise affirmed  
in the ciuill law. <sup>o</sup> And therefore it is held by the  
interpreters of the ciuill law, *Proditorie agit qui non*  
*indictum mouet bellum*.<sup>p</sup> And Varro reporteth, that  
iuſt warres did ceaſe to bee waged in his time,  
becauſe they ceaſed altogether to bee lawfully  
denounced <sup>q</sup>. For the auncient Romanes did  
not afforde a triumph to anye, vnleſſe the  
warre were ſolemnely proclaymed <sup>r</sup>: And Al-  
ciat accompteth this the law of nations <sup>s</sup>. And  
becauſe warre is a publike contention, if in pri-  
uate cauſes ſummons and citations be uſed, ſurely  
in vndertaking warre, denuntiation ought to bee  
uſed <sup>t</sup>; for which cauſe the Romanes were in this  
point ſo preſiſe, that they did often denounce war  
when they needed not; euen when the law of na-  
tions was apparantly violated by other nations, ſo  
that they might iuſtly haue enforced them, as the  
rule of the common law is to haue taken notice of  
their owne wrong. In this ſort they proclaymed  
warre againſt the Senones who had ſlayne their  
ambaffadors: againſt the Illyrians and Taren-  
tines, who had contumeliouſly abuſed them <sup>u</sup>.  
And this is noted of them in the caſe of the Sa-  
guntines: *Non ſtatim ad arma procurrunt, dum prius*  
*more legisimo queri malunt*:<sup>x</sup> So Liue reporteth of  
the Frenchmen; *Erant qui exemplo Roman e-*  
*undum cenſerent, ſed vicere ſeniores vt legati prius*  
*mitterentur queſtum iniurias, poſtulatumeque vt pro*  
*iure*

n) c. 1. 2. q. 2.

o) l. 24. de

capt.

p) Iaſ. Bald. l. 1.

de iuſt. l. 4. c. de

obl. p.

q) Var. lib. 4.

de ling. Lati.

r) Sigon. de

anti. iur. pro

vin.

s) Alcia. 14. de

ſi. cor.

t) Bald. l. 12. de

ſeru. urb. præd.

u) Liui. 12. 20.

x) Flor. lib. 2.

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- a) Liui. lib. 5. *iure gentium violato Fauij dederentur*: <sup>a</sup> Wherefore Xerxes doeth greatly inuey againſt the Græcians becauſe they did not firſt aſſay to end their cōtrouerſies without weapons: <sup>b</sup> and for the ſame cauſe Ioab is iuſtly reprov'd in the ſcripture of the wiſe woman: <sup>c</sup> neither was hee vnwiſe in this pointe that ſaid: *Omnia prius experiri verbis quam armis ſapientem decet. Qui ſcis an qua inbeam ſine vi faciat.*
- d) Ter. in Eunuch. <sup>d</sup> Yea euen Tullus a moſt warlike man is of this opinion: *Qua verbis componi non poſſunt armis decernantur*: <sup>e</sup> So Theſeus a notable Captaine ſaith in Euripides. *Si oratione non perſuadeo bellum laudo. Vade, dic Creonti: Theſeus amanter repeliſ a te cadauera: hic primus ſermo: ſi nihil efficiſ, ſecundus, ut me armatum expectet.* And ſo Theodorus ſaid truly to Alaricus: *Tunc ad arma cum locum apud aduerſarium iuſtitia non poteſt inuenire*: And againe, *Quid opus homini lingua ſi cauſam manus agat armata*. <sup>g</sup> Thus it is euident that by the lawe of nations warre ſhould be denounced.
- e) Dionif. li. 3.
- f) Eurip. in Supp.
- g) Caſſiod. 5. Var. 1. 7.

4 Somewhat muſt be ſpoken of truce, which is thus defined in the ciuill law: *Inducia ſunt cum in breue et in preſens tempus conuenit, ne inuicem ſe laceſſant*: <sup>h</sup> And Gellius maketh mention of a truce which was made for an houre onely: <sup>i</sup> Vergill calleth truce *pacem ſequeſtrā*, becauſe it ſequeſtreth as it were, and ſuſpendeth war for a time. Varro tearmeth it, *Ferias belli, warres holiday*. <sup>k</sup> In that it is called *ſequeſtrapax*, it is to bee noted that it is not ſimply

h) lib. 19. de capt.

i) Gell. li. 1. c. 25.

k) Virgil. 11. Ænei.

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simplie a peace. In the Cannon lawe it is called  
*regna*: it is of this nature, that by it warre is not  
 ended but deferred onely, and so it is middle be-  
 twixt warre and warre euen as sequestration is  
 middle *inter duos altercantes* betwixt two parties  
 that are at variance. But peace properly so tear-  
 med is of another nature, because it is perpetuall,  
 and vnder the name of peace truce is not compre-  
 hended, no though truce be concluded for a long  
 time: as the Veientines made a truce during the  
 space of an hundred yeares with the Romanes:  
 afterward for fortie yeares, and after for twentie:  
 as the Tuscanes had a truce first for thirtie yeares  
 after for fortie, and then peace was concluded.  
 Neyther is it so much as a league, as may appeare  
 by *Liue: De fœdere negarum: inducia in bienni-*  
*um data Samnitibus*: And so hee reporteth of the  
 Tuscanes: *Pacem fadusquē petierunt, inducias in*  
*triginta annos impetrarunt.*<sup>l</sup> So *Plutarch* repor-  
 teth of *Pelopidas*, that hee woulde not conclude  
 peace with his aduersary, but that he granted him  
 truce<sup>m</sup>. *Ancharanus* doth thus distinguish them  
 there is a time of warre, a time of truce, a time of  
 peace<sup>n</sup>. And an other *Ciilian* auoucheth truce  
 to be more like to war then to peace<sup>o</sup>. And an o-  
 ther saith fitly, *Inducia non interrumpunt hostilitatē,*  
*sed actus hostiles*:<sup>p</sup> But this must be obserued in  
 obseruing truce, that in time of truce aduantage  
 may not be taken either in regard of the place, of  
 the fight, or of other circumstances. Therefore

l) *Liui*, 1. 1. 4.  
9. 10.

m) *Plut.* in  
*Pelop.*

n) *Anch.* conf.  
88.

o) *Corn.* 3.  
conf. 167.

p) *Aug.* 1. *Si u-*  
*ris de pact.*

N

Phillip

## The seventh Chapter.

- Phillip* may seeme to haue done vniustly and against the lawe of armes, who hauing obteyned truce for the burying of his dead, did in this time of truce conuey his armie into safer places. And the D. of *Mompensier* was likewise guiltie of this fault, who hauing couenanted to yeeld vp a forcelet if helpe came not within one moneth, in the time of truce departed from the forcelet, hauing left it sufficiently fenced<sup>r</sup>. And it is thought to bee against the lawe of truce to receiue soldiers at that time into a towne besieged: <sup>r</sup> For it is an vsuall clause in the concluding of truce: *Nil nouari securis a pendente*: <sup>r</sup> So *Scanderbege* doth sharply reprehend the Turkes, who hauing promised to yeelde themselues if ayde did not come within a certaine number of daies, do in the meane season repaire the breaches of their wals and munition:
- <sup>u</sup> Neither can *Tissafernes* bee excused from the violation of truce, who in that time did make himselfe more strong for warre. But *Agesslaus* is noted to haue done the contrarie: <sup>c</sup> Neither can the acte of *Belisarius* bee iustified, who in the time of truce surprised certaine townes, out of which the Gothes departed, howbeit hee answered to this obiection, that he might well enter into such townes as the Gothes had left and waiued: but the Gothes did not waue them, for they departed out of these townes through penurie, & want of victuailes<sup>cc</sup>: Now by the ciuill law hee that departeth out of a place, or casteth any thing away
- q) *Liui. lib. 31.*
- r) *Guicciar. li. 2.*
- s) *Com. Pij. 2. lib. 5.*
- t) *Vital. tract. clau.*
- u) *Scanderb. 8.*
- c) *Corn. Nep. Agessil.*
- cc) *Procop. l. 2. de bel. Goth.*

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away being inforced by necessitie cannot bee said :  
to leaue that thing behind him *pro derelicto*<sup>d</sup> : Yet  
the common law may seeme to sway with *Belisa-*  
*rins*, which extendeth *derelictum*, both to that  
which is voluntarily forsaken<sup>e</sup>. And to that which  
is waied and left by necessitie<sup>f</sup> : yet it cleareth  
not *Belisarius*, his acte : for during the time of  
truce no warlike action should haue beene enter-  
prised : so that if the Gothes had left these townes  
voluntarily, and not by necessitie, this had not ex-  
empted him from doing apparant wrong.

5 Because safeconduct is a thing much vsed a-  
mongst nations in politike respect, & therefore  
is parcell of the law of nations, I may not omit or  
ouerpasse it. Safeconduct because it is in Latine  
*fides publica*, doth argue that it may not be granted  
regularly but of a publike person who is an abso-  
lute Monarch, or of some publike estate or com-  
mon weale; and in *England* it hath beene vsed to  
bee graunted by parliament, as appeareth by the  
statute of *Magna charta*: *Omnes mercatores, nisi an-*  
*te prohibiti fuerunt, habeant saluum conductum exire,*  
*& venire in Angliam ad emendum & vendendum*  
*præterquam in tempore guerra:* & *si sint de terra con-*  
*tra nos guerrina, si mercatores nostri in patria illa sint*  
*salui, & salui sint illi in terra nostra.* I mention-  
ed before this worde (regularly) because by  
commission and speciall warrant hee that hath  
*potestatem explicandi ardua* : or hee that hath  
*causa cognitionem*, maye graunt and afforde

d) l. 1. 7. pro  
derel. l. 8. de  
le. Rho.

e) 16. Eliz. 138  
Dy.

f) 29. E. 3. 29.  
12. E. 4. 5.

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h) Decia. 3.  
confi 96.

i) Bar. li. 1. C.  
denan. Alex.  
2. conf. 46. 5.  
Alci. 4. 14.  
k) Alc. l. conf.  
11. 15. Dec.  
conf. 51.  
l) 8. 38. de pz.

m) Plut. in  
Mar. & Cat.

n) Liul. 24. 26  
Val. Maxi. 2. c.  
7. Front. 4. c.  
1. Appi. in  
bel. Hispan.

o) Bal. 5. conf.  
413.

safeconduct for the better performance of his taske<sup>h</sup>. But safeconduct is to be vnderstood largely, by equitie, and without cauils: and therefore if safeconduct be granted to one, to come safely to a place it is intended that he ought safely to depart, and hee that hath licence to passe safely may send safely<sup>i</sup>: and he to whom safeconduct is graunted for himselfe and his company, may bring with him in his company odious persons, as Iewes and infidels<sup>k</sup>: but fugitiues, reuolters, rebels and traitors he may not bring with him, for no law of nations nor benefit of common weale belongeth to such, reuolters or runnagates are by the ciuill law burnt aliuie, or els hanged vpon a gibbet. *Marcellus* and *Cato* the Cenforian did whip them and put them to death<sup>m</sup>: Others in setting forth of their games and shoues did cast them to beasts: others did lay them vnder Elephants to be trode & torne in peeeces, others did with other extremitie worke their death<sup>n</sup>: neither do I think that safeconduct may extend to men of another nation, then he is of, to whom safeconduct is granted. For example, the Fleminge, the Turke, the English are enemies to the Spaniard, if safeconduct be granted to the Fleming, he may not take Englishmen, or Turkes with him in his company. But safeconduct being granted to the husband must needs extend to the wife, and to such thinges as be necessarie to him *ad bene esse*<sup>o</sup>: And to such familie-seruauntes or retinue as to be agreeable and proportionable  
to

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to his dignitie and estate<sup>r</sup>: for according to the rule of the ciuill Law, *in personalissimis actibus inseparabiles persona includuntur*<sup>q</sup>.

<sup>p</sup>) Aug. l. 8. de inof. test.

<sup>q</sup>) Bal. 1. 3. de const. pri.

6 I will now speake of Captiues, and of the rightes that belong to them ( for miserie needeth some solace ) by the Law of Nations. A Captiue as the name importeth is he, who is taken in warre, and though he be borne of a captiue woman, yet is he free, vntill such time as he be seised into the handes, or to the vse of the Lord, and though he be so seised, yet it must needs be that he was borne free: for the rule is true: *Qua iure gentium*

*acquiruntur, ea non acquiruntur nisi vera interuenierit apprehensio*<sup>r</sup>, otherwise he should possesse the treasure who possesseth the ground in which it is, yet he doth not possesse it, howbeit he knoweth of it, and therefore that rule is not in the Law of Nations true: *Si quis habet id quod continet, habet id quod continetur*: For in the Law of nations this generall maxime holdeth place: *Vera et realia non ficta, et verbalia amat ius gentium*: yet such a precise seisure is not heere ment that euery part of him that is taken should be touched, euen to the verie shirt of a man, as long as he that seifeth hath a will and power to seife: for he that toucheth a mans eare, is in the ciuill Law held to touch the whole man<sup>f</sup>. Some hold opinion that he is not a Captiue, vntill he be brought into the tents of his enimie<sup>t</sup>, howsoeuer it be, it is plaine, that Captiues may not be put to death, as the prophet

<sup>r</sup>) l. 3. de acqui. po. vbi Ias.

<sup>f</sup>) Alc. d. 42. d. l. 3. l. 21. de fur.

<sup>t</sup>) l. 9. de capt. Alex. l. 1. de acqui. po. ff. 4. reg. 6.

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ſaid to the king of *Iſrael*: *An quos captiuos abdu-  
ceres, gladio ſuo et arcu ſuo eps percuteres?* And  
though bloudie *Pyrrhus* deſirous to kill *Polyxena*  
did pretend, that *lex nullacapro parcit aut penam  
impedit*: yet *Agamemnon* aunſwered him well,  
*quod non veras lex hoc veras fieri pudor*<sup>u</sup>. To which  
purpose the other *Seneca* ſaith excellentlie: *An-  
guſta innocentia ad legem bonus eſſe, et latius officio-  
rum patet quam iuris regula, multa exigit pietas, hu-  
manitas, liberalitas, iuſtitia, fides, qua omnia extra  
publicas tabulas ſunt*. The *Scots* therefore are  
greatlie to be commended, who as *Buchanan* re-  
porteth, though great daunger were imminent,  
yet did not ſlaie their priſoners<sup>uu</sup>. Neither did  
the *Engliſh* euer (that I read) vnleſſe it were  
once in that notable fight, in which they did vt-  
terlie deſtroy the *French* dominion, who hauing  
more priſoners then themſelues were, and fin-  
ding their captiues to tende to conſpiracie and  
mutinie, hauing ſingled the moſt noble, did kill  
the baſer priſoners<sup>x</sup>. But doubtles the *Turkes*  
crueltie was barbarous, who did kill fowre thou-  
ſand priſoners, that they might not be a burden  
or charge vnto him<sup>a</sup>. And this fault was com-  
mitted by *Henry the ſecond* king of *Fraunce*<sup>b</sup>, who  
did cauſe certaine obſtinate priſoners, & perſeue-  
ring in fight to be hanged: a kind of death vnfit  
for Captiues, who are not ſo to be puniſhed  
without great and vrgent cauſe, becauſe it is a  
point of immanitie, and crueltie, bitterlie to rage  
againſt

u) *Senec. in  
Tro.*

uu) *Buchan.  
lib. 9.*

x) *Com. Pi. 2.  
lib. 6.  
Polydor. 17.*

a) *Ior. lib. 3.*

b) *Nat. Com.  
lib. 8.*

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against them which defende their Prince, and their Countie.

A Captiue one may be, and yet not a bondslaue: for he can not be a bondslaue, vnlesse his Lord will haue him so. There was a ceremonie therefore vsed to make him bondslaue, which was called *Nexus*; And it seemeth that the *Prætor* had some authoritie in this matter: which I ground onelie vpon the last will and militarie testament of a Romane, ingrauen in stone as *Sigonius* reporteth, who would haue his villaines manumitted by the *Prætor*: and sithence *eiusdem potestatis est* <sup>c) Car. Sigo. in vit. et trim. ph.</sup> *ligare & soluere*, I am of opinion therefore, that he had some intermedling in the making of them villeines. But in the making of them villeines, chaines doubtles were vsed: and therefore *Vespasian* when he had taken *Iosephus* prisoner, would needes haue his gyues to be broken, not to be loosed, that he might seeme neuer to haue been a bondslaue <sup>d) Ioseph. bb. s. de bel. Iud.</sup>. And whereas the Law saith, <sup>e) l. s. de ac. re. do.</sup> that such things as are taken of enemies *captientium sunt*, it is not meant *nolentium*: therefore though the power of him that taketh make a captiue, yet his will must make a bondslaue. But surelie the state of captiues, if they become bondslaues is verie miserable: for they are as it were deiectioned from their nature, and are in accompt of Law tourned into beastes: And wheras before they were accompted in Law persons now they

arc

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f) ad leg. A.  
quit. 209.  
Bald. 2. conf.  
358.

g) Sen. 1.  
contr. 5.

h) Plat. Lib. 6.  
de leg.

m) Arist. 1.  
polit.

n) Macrob. 1.  
saturnal. 11.

o) Cle. Alex.  
Wl. pæd.

p) Athenæ.  
Lib. 6.

q) Pollu. 7.  
Plat. de su-  
perst.

are accompted things<sup>f</sup>, and therefore of the  
*Gracians* they are generally called *Samata* bodies.  
 But I do not think this seruitude to be *contra na-  
 turam*: For *Aquinas* his distinction is not to be re-  
 prooued, that *seruitus* is *à natura*, though not *se-  
 cundum primam intensionem*, by which we are all  
 made free: yet *ex secunda* by which God doth  
 punish whom it pleaseth him: but such bond-  
 slaues must not be vsed like beastes, but like men:  
 wherefore the speech of some is intollerable (*Se-  
 neca* reporteth it) who did affirme *domino in ser-  
 uum nihil non licere, pictori nihil non pingere*<sup>g</sup>. And  
*Plato* writeth not well when he saith, that bond-  
 slaues are to be handled roughlie<sup>h</sup>. *Aristotle* more  
 trulie, that they ought to be handled mildlie<sup>m</sup>.  
*Cicero* more iustilie, *Meminerimus et aduersus infi-  
 mos iustitiam esse seruandum*, *Macrobius* more mo-  
 destlie, *Dominum patrem familias, seruos familiares  
 appellauerunt nostri maiores omnem seruis consume-  
 liam detrahentes*<sup>n</sup>. *Clemens Alexandrinus* more  
 compassionatellie: *Famulis utendum tanquam nobis  
 ipsis: sunt enim homines tanquam nos*<sup>o</sup>. *Nunquid  
 canes saginabuntur, homines pascentur male?* said  
*Diogenes*. In *Athens* there was a Law *de iniuria  
 seruili*<sup>p</sup>. Amongest the other *Gracians* there was  
 a Law, that bondslaues might depart from their  
 cruell maisters. In some common weales they had  
 licence to purchase landes, and goodes, as *Athe-  
 naus* reporteth, according to the *Romane* Law, as  
 appeareth by *Seneca*, *Dominus prestare debet seruo  
 cibarium*,

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*cibarium, vestiarius: est enim seruus perpetuus mercenarius*<sup>r</sup>.

r) Senec. lib. 3.  
de benefic.

7 Enough of Captiues: Now let vs not be vnmindfull of Hostages, which are in state not far distant from Captiues: Therefore *Quinctius* did cause the sonne of *Phillip*, and the sonne of *Nabis* to be led before his triumphall chariot, though they were but Hostages<sup>r</sup>. And the *Parthians* were wont to saie: *obsidarius nihil aliud est, quàm seruitus*<sup>r</sup>. By the Ciuill Law they can not make a testament no more then others, which are in the enemies power<sup>u</sup>. The definition of Hostages is thus deliuered in the ciuill Law: *Obsides sunt qui fidei publica seruanda causa, principi, aut duci exercitus dantur*<sup>uu</sup>. To whom this daunger is incident by the Law of Nations; That if promise be not kept to him whose Hostages they be, they may presentlie be put to death: As may appeare by the examples of the *Theſſalians*<sup>a</sup>, the *Romanes*<sup>b</sup>, the *Gothes*<sup>c</sup>, the *Dacians*<sup>d</sup>, the *English*<sup>e</sup>.

f) Oros. lib. 4.  
c. 20. Liui. 34.

t) Ioseph. lib.  
18. antiqu.

u) L. 1. 1. qu.  
test. fa. po.

uu) Bal. l. 2. c.  
de pa. qui fidi.

a) Plur. de cla.  
mu.

b) Liui. 2. Diony. 6.

c) Procop. lib.  
1 de bel. Goth.

d) Bodin. 1. de  
rep. c. 10.

e) Polyd. lib.  
5. 7. 15.

c) Ammian.  
Marc. lib. 17.

8 I may not omit to speak somewhat of the Law, and lawfull vse of Stratagems, which haue been so much fauoured and practized in auncient times, that it hath been generallie and peremptorie affirmed: *Nulla discrimine virtutis ac doli prosperi omnes laudari debent bellorum euentus*<sup>c</sup>. And *S. Augustine* his authoritie is vrged in the Canon Law: *Cum iustum bellum susceperis, vitrum aperta pugna, vitrum insidijs vincas nihil ad iustitiam interest*<sup>d</sup>: To which agreeth the saying of

d) Aug. Ios.  
q. 10. c. 2. 23.  
q. 2.

## The seventh Chapter.

the Poet: *Dolus an virtus quis in hoste requiratur* <sup>e</sup>  
 And counsaile hath been giuen by Oracle, that  
 men must not onely fight by warlike instruments,

e) Pausan. lib.

4.

but by nimblenes of witte <sup>e</sup>. And *Brasidas* saith

f) Sili. lib. 15.

in *Thucydides*, that *the theft of warre is most honest*.  
 And *Silius* censuring *Fabius* vsing such cunning

plots saith: *Exin virtuti placuit dolus* <sup>f</sup>. But yet  
 great regard is to be had, that all kind of deceit and

fraude may not be vsed & admitted: because Law

must be vsed in dealing with enemies. But the  
 Law admitteth not *dolum malum*, being the arte

*boni et equi*. And in concluding any matter with

enemies, all captious and scrupulous disputati-

ons and interpretations are to be auoided: for as

*Cicero* saith: *Leguleiorum est syllabas & apices aucu-*

*pri*, (*non militaris simplicitatis* &c.) Wherefore *Pe-*

*ricles* dealt vniustly, who hauing couenanted with

his enemies, that they should be safe *si ferrum de-*

*ponerent*, did afterward kill them, because they had

about their harneys certaine yron buttons: for

this word (*ferrum*) was to be vnderstood of wea-

pons: as appeareth by that saying of *Pyrrhus* in

*Ennius*: *Ferro non auro vitam cernamus utriq;*. And

they of *Plataea* were vniust, who hauing promised

to restore certain prisoners, did first kill them, and

then deliuer them: as if the carcasses of men were

captiues, and a dead man were a man. Vniust was

*Alexander*, who hauing promised to certaine per-

sons a safe departure out of the citie, let them go

safe out of the citie, but hauing gone a little of

their

g) Cicer. 1. de  
 ora. l. 25. de  
 prob.

h) Fronti. lib.  
 4. c. 7.

i) Thucyd.  
 lib. 2.

## The ſeuenth Chapter. 50

their way, he cauſed them to be ſlaine <sup>k</sup>. The *Sam-* <sup>k) Diod. lib. 17. Polyen. 4</sup>  
*nites* were vniuſt, who hauing promiſed their ene-  
 mies that they would take away but a ſtone all a-  
 long the wall, did take away the foundation-ſtones  
 & ſo deſtroied the whole wall <sup>l</sup>. And that *Romane* <sup>l) Polyen. 6</sup>  
 can not be excuſed from blame, who when *Anrio-*  
*chus* had promiſed him that he ſhould haue halfe  
 of his ſhippes, cauſed all his Nauie to be cut in the  
 middeſt <sup>m</sup>. And the craft of the people of *Lacros* <sup>m) Valer. Max. lib. 7. c. 3.</sup>  
 is to be reprooued, who hauing promiſed perpetuall  
 friendſhip whileſt they ſhould treade vpon  
 that earth, and whileſt they ſhould carie on their ſhoul-  
 ders their heades, did caſt out of their ſhoes the  
 earth that they had put into them, and remooued  
 from their ſhoulders the heades of garlike which  
 they had priuillie laied on them, and then they le-  
 uied warre <sup>mm</sup>. For as *Cicero*, though a pagane ſaith  
 diuinely: *Sēper in fide quid ſenſeris, non quid dixeris*  
*cogitandum* <sup>n</sup>. Neither is it materiall that ſome ex-  
 amples, and namely theſe aboueſaid may be vrged  
 for the defence of ſuch ſiniſter dealing, for theſe  
 few examples make not the Law of nations. Nei-  
 ther in this treatiſe do we imagine what hath been  
 done of ſome men, of ſome nations, in ſome caſes,  
 vpon ſome occaſions. But what hath been done of  
 the moſt part of the beſt men of all Nations, vpon  
 grounded aduiſe, and free election. And ſurely di-  
 uers ſuch great & eminent parſonages haue ſome-  
 time vſed ſuch ſtratagems in good ſort, and with-  
 out breach of national iuſtice. *Judiſh* that wiſe and

## The seventh Chapter.

valiant woman, for her plot intended and practized against *Olofernes* is commended of diuers, yea euen of Diuines: of *Clemens Alexandrinus*<sup>o</sup>, of *Ambrose*<sup>p</sup>, of *Ierom*<sup>q</sup>, of *Augustine*<sup>r</sup>, of other. So *Augustus Cesar* did promise to *Cleopatra* what she would, if she would effect the death of *Antonius*<sup>s</sup>. Such snares were laid against *Timoleon*, against *Eumenes*, against *Lucullus* by *Mithridates*, as *Plutarch* reporteth. They were assayed by *Metellus* and *Marius*, and perforced and executed by *Sylla* against *Jugurtha*, as *Salust* auoucheth. They were compassed of the *Æsolians* against *Nabis*<sup>t</sup>. And attempted of *Perseus* against *Eumenes*<sup>u</sup>. And likewise of *Decebalus* the king of *Dacia* against *Traian*<sup>uu</sup>. They were procured latelie of *Tirnuilius* against *Sforza* Duke of *Millaine*<sup>a</sup>. And in time past perforced by *Totilas* against the Gouvernor of *Perusia*<sup>b</sup>. And in this age of *Selymus* the Turkish Emperour, against king *Aladokus*<sup>c</sup>. And heretofore of a certaine *Triballian* against *Amurathes*<sup>d</sup>. Manie such cunning practizes were deuised and executed by *Annibal* that admirable souldier, in whom the two seuerall natures of the Foxe and the Lion did constell and accorde: but he was fully counteracted by the *Romanes*, of whom therefore he said: *video Romanos suos habere Annibales*.

I must conclude with shewing the vniuersall and absolute right, aduantage, libertie, power, and prerogatiue of the Conquerour. The question

o) Clemens  
stromat.

p) Amb. 3. de  
offic.

q) Hieron. apo.  
Ru.

r) Aug. de te.  
2:8. 229.

s) Dio cassi.  
lib. 51.

t) Paul. lib. 8.

u) Liui. lib. 42.

uu) Zona.  
Dio. 68.

a) Ioui. lib. 11.

b) Procop. lib.  
3. de bel. Goth.

c) Ioui. lib. 17.

d) Catarchond.  
lib. 1.

## The seventh Chapter. 51

tion hath been heretofore, whether all these things that anie waie belong to the people subdued may be claimed by the Victor, or onelie such things *Qua pede pramit, manus enet*. It hath beene agreede, that when *Alexander* did surprise Thebes, he was an vniuersall & no particular possessor of all their rightes and inheritances \*: e) Bald. 2.  
Conf. 202. And whereas the Chalcedonians being dangerously assaulted by the armie of *Alcibiades* did priuily and closely conuey their goods for safetie vnto the Bithinians, *Alcibiades* hauing conquered them, made earnest demand of these goods, to be deliuered him by the Bithinians †: And the Romanes did demand the bodies of certaine kinges *Demetrius* and *Mithridates*, being ouercome and put to flight, of them to whome they fled ‡: f) Xenoph. 2.  
Græc. but without all doubt these places, and the things of these places which the conquering armie doth possesse, doe iustly belong vnto the conqueror, & therefore that is said to be the conquerors territorie, *ubi exercitus eius terret* <sup>h</sup>: And *Alexander* might well laugh at *Darius*, who in the articles of peace would haue yeelded these things to *Alexander*, which he did already possesse <sup>i</sup>: And *Hannibal* did disdain the Roman simplicitie (though they did it of great pollicie) in selling that ground which hee did possesse with his armie <sup>k</sup>: And *Brasidas* the Lacedemonian saide well, that that was not the Boetians land, which the Lacedemonian armie had seysed: <sup>l</sup> And when a Monarche

## The ſeuenth Chapter.

or free citie yeeldeth, al the members and inferior parts doe yeeld *implicatiue*: wherefore *Baldus* ſaith well, *A ſubmiſſione capitis ſequitur ſubmiſſio mēbro-  
rū & rerū, quia ſeruiere capite membra ſeruire neceſſe  
eſt.* And it is certain, that the ornaments & riches  
of the people ſubdued they may take away *iure  
imperatorio*, as *Cicero* ſaith: <sup>m</sup> So *Camillus* a moſt  
ſtrict obſeruer of the lawe of armes did take the i-  
mage of *Iuno* from *Veios* <sup>n</sup>: *Marcellus* caried away  
many things from *Siracuse*, <sup>o</sup> and *Mummius* con-  
ueied great ſtore of Church-ornaments out of *A-  
chaia* <sup>p</sup>: And *Sir Frauncis Drake* that ſea-flowre of  
*England* did (as I haue heard) bring home with  
him the great golden ſtatue of *S. Chriſtopher*  
which hee tooke in one of the Churches of *Porto  
Rico* when hee ſacked it. And though there bee  
ſomewhat in ſcripture <sup>q</sup> ſpoken againſt the ſpoyl-  
ers of the temple of *Ieruſalem*, the cauſe was for  
that God had choſen that temple to be his houſe  
and the ſpoilers of it did it in reproach of his ma-  
ieſtie. But it is plaine that cities ſurpriſed may bee  
ſacked: cities yeelded vpon condition may not <sup>r</sup>:  
and cities ſurpriſed may bee ſold, and the walles  
may be deſtroied, and the cities themſelues <sup>s</sup>. The  
wallſ of *Athens* were deſtroyed by the *Spartanes* <sup>t</sup>.  
The wallſ of *Sparta* by the *Achaens* <sup>u</sup>: the wallſ  
of *Ieruſalem* by the commandement of *Pompey* <sup>x</sup>:  
part of the wallſ of *Giſcala* by *Titus* <sup>y</sup>: the wallſ  
of *Argemina* by *Artilla*, which hee would needes  
haue afterward called *Polydopolis*, as now hauing  
many

m) *Cicer.*

*Verr.* 3.

n) *Liui.* lib. 4.

o) *Plut.* in

*Marc.*

p) *Zonar.*

q) *Dani.* c. 5.

r) *Liui.* lib. 37.

s) *Plut.* lib. 4.

t) *Thucyd.* li. 1.

u) *Liui.* li. 38.

x) *Tacit.* lib. 5.

y) *Ioseph.* 4.

belli. *Iud.*

## The seuenth Chapter. 52

many waies to come vnto it. <sup>b</sup> *Fredericke* was brought in triumph through the walls of *Millaine* yeelded vnto him <sup>c</sup>: *Alpousus* through the walles of *Naples*: (as *Guicciardine* reporteth) *Iulius* the Pope of *Rome* through the walles of *Mirandula*: was it because the gates were throwne downe? or because such a holy man wold not make a prophane passage through the gates, but through the walles which are commonly consecrated? or because his ordinarie course is to enter by the window, his extraordinarie at the wall? or because he wanted the *Aspe* and the *Basiliske* to walke vpon, he thought good for that present to trample vpon stone and morter? as to generall subuersion of cities after a victorie obtayned, it is manifest that *Thebes* was destroyed by the generall concord of all the Grecians, because they tooke part with the Persians \*. *Linie* maketh mention of *Alba*, *Pomeria*, *Corbio*, *Cortuosa*, *Contenebra*, *Satricum*, *Antipatria*, *Phaleria*, and others, which were so destroyed <sup>f</sup>: *Carthage*, had the same fortune, which is said to haue suffered the plough, a ceremony vsed of the Romanes in razing of the foundations of a citie conquered <sup>g</sup>: the same fortune had *Ierusalem* according to the prophesie of *Micheas*: *Sion vt ager arabitur* <sup>h</sup>.

<sup>b</sup>) Bon. fin.

<sup>1</sup>. vng. 2

<sup>c</sup>) Sigon. lib.

13. de re. It.

<sup>d</sup>) Guicciar. l. 9

<sup>e</sup>) Diod. li. 15.

<sup>f</sup>) Linie. l. 1.

2. 3. 6. 7. 24.

<sup>g</sup>) 1. 32.

<sup>h</sup>) 1. 2. 1. quimo.

vi. am.

<sup>h</sup>) c. 7. dist 76.

1. Mich 3.

The

## The eight Chapter.

*That in the lawes and constitutions touching Citties, corporations, liberties, franchises and immunities, and the good gouernment and administraction of them, all nations haue agreed.*



Corporations in the whole course and constitution of them doe verie much resemble the naturall bodie of man: for as there bee in it great diuersitie of partes, so is there likewise great distinction in cities and corporations, of misteries & degrees. In *Egypt* there were in their seuerall corporations diuers sorts and callings of people; Kings, Priests, Warriors, and Workemen: which last kind was subdiuided into foure members, Shipmen, Artificers, Husbandmen, and Shepheards, <sup>a</sup>. And as a naturall bodie doth consist of things bodily, and of a soule, which is vnbodilie, so that it consisteth of thinges meerely opposite. So likewise a citie or corporation consisteth of multitude and vnitie, whereof multitude is as the bodie, vnitie as the soule, both different in nature. That multitude is as the bodie of a Cittie needeth no great prooffe: Yet heare thereof *Florus: Cum populus Romanus, Etruscos, Latinos, Sabinosque miscueris, & unum ex omnibus sanguinem ducat, corpus fecit ex membris, et*  
ex

a) Arist, lib. 7.  
polit. c. 10.  
Herod. lib. 2.  
histor.

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ex omnibus unus est <sup>b</sup>. Heare the opinion of the Stoicks, comparing the world to a corporation. <sup>b) Florus. l. 3. c. 18.</sup>  
*Ciuitas totius mundi una est, & omnes homines populares, municipesquē & veluti armentum unum compascuo in agro compascens* <sup>c</sup>: Heare also Seneca. <sup>c) Cice. li. 3. de fi. Plut. de vi. Alex.</sup> *Hommo homini in maiore ciuitate ciuis est, & in adiutorium mutuum creatus* <sup>d</sup>: and that vnitie is the forme and as it were the soule of a corporation may diuersely appeare <sup>d) Senec. l. 1. & 2. de ira.</sup> *Florus* saith excellently (for he either could not or would not write but excellently) *Augustus Caesar sapientia sua atque solertia percussus undique et perturbatus ordinauit imperij corpus. Quod ita nunquam haud dubie coire & cōsistere potuisset, nisi unius presidis nutu quasi anima, & mente regeretur.* <sup>e</sup> And Seneca saith wittily: *Societas hac nostra lapidum fornicationi simillima, casura nisi inuicem obstarent & sustinerent se lapides;* <sup>e) Florus. lib. 4. c. 3. f) Sene. epist. 96.</sup> This our society is like vnto an arche of stones, which would soone fall if one stone did not hinder and beare vp another. *S. Ambrose* diuinly: *Lex natura ad omnem nos stringit charitatem, ut alter alteri tanquam unius partes corporis deferamus.* And the saying of Cicero, though an heathen is not heathenish. *Spurca eorum sententia qui ad se omnia referunt* <sup>g</sup>. And both he and *S. Ierom* <sup>h</sup> doe condemne certaine Philosophers, who whilest they thinke it sufficient to be without all kinde of vniustice, and bend themselves wholly to that, that they may not hurt any man, yet offend greatly in this, that they doe not seeke and endeouore to profit other men, but for-

## The eight Chapter.

take that part of iustice, whilest they follow the other : from which fault all the Rhetoricke in the world cannot exempt the cloistered Monkes and couchant Friers of the Romish liturgy : *Claudian* speaketh aptly of this matter <sup>i</sup> :

i) *Claudi. 4.*  
conf. Honor.

*Nonne vides operum quæ se pulcherrimus ipse,  
Mundus amore ligat.*

k) *Liui. li 30*  
l) *Liui. lib. 3.*

m) 21. E. 4. 7. 12  
27. 67. Mai. de  
Norwich. c.  
per Townes.

Thus it is euident, that a multitude lawfully & for a politike end assembled is the matter of a corporation, vnitie the forme. Likewise as a naturall bodie hath his diseases, so hath the bodie politike. Wherefore *Liui* his comparifon is incomparable. *Nulla magna ciuitas diu quiescere potest: si foris hostem non habet, domi inuenit, ut praua lida corpora ab externis causis tuta videntur: sed suis ipsa viribus onerantur* <sup>k</sup>. And againe, *Discordia ordinum est venenum urbis huius* <sup>l</sup>: yet in some things the bodie naturall and a citie or corporation do differre: for the naturall bodie is transitorie and mortall: but a bodie politicke dieth not as it is shewed by *M. Townsend* in the Mayor of *Norwiches* case. The comminaltie is the substance of a corporation: and of them dependeth all the inheritance: for the Mayor and the Sheriffes may die, and be chaunged, but so can not the comminaltie <sup>m</sup>: which is elegantly auouched by *Liui* speaking in the person of *Scipio* that worthy man: *Si ego morerer mecum expiratura respub. mecum casurum imperiũ populi Romani esset? ne istud*  
*Iupiter*

## The eight Chapter. 54

*Iupiter optimus maximus sinat urbem auspicio Djs  
 auctoribus in aeternū conditam, fragili huic & mortali  
 corpori aequalem esse: Flaminio, Paulo, Graccho, Post-  
 humio Albino, M. Marcello, T. Quinctio. C. Fulvio,  
 Scipionibus meis, tot, tam praeclaris imperatoribus uno  
 bello absumptis, superstes est populus Romanus eritque  
 mille alijs nunc ferro, nunc morbo morientibus* <sup>n) Luili, 28.</sup> And  
 Tacitus speaketh of this matter pithily though  
 shortly: *Principes mortales, aeterna resp.* <sup>o) Tacit, an-  
 nal, 3.</sup> And there  
 is an other difference taken in the said case of the  
 Mayor of Norwiche: for a man restraining the  
 hands of an other mans naturall bodie, doeth re-  
 streigne his bodie, but if one do imprison the She-  
 riffes of a citie, the comminalty is not imprisoned.  
 By this comparifon the nature of a politike bodie  
 may sufficiently appeare. Now I will speake of  
 the incorporating and enfranchising of citizens  
 which hath beene very auncient, as may appeare  
 by Tacitus. *Conditor nostri Rōmulus tantum sapien-  
 tia valuit, ut plerosque populos eodem die hostes, dein ci-  
 ues habuerit*: and he sheweth it more particularly,  
*Neque ignoro Iulios Alba, Cornucanos Camerio, Por-  
 tios Tusculo, & ne vetera scrutemur, Lucania Erru-  
 riaque, & omni Italia in senatū accitos.* And he gi-  
 ueth a good reason wherefore it should be so: *mo-  
 ribus, artibus, affinitatibus nostris mixti aurū & opes  
 suas inferant potius quā separati habeant*: condem-  
 ning the Lacedemonians & Athenians, who vsed  
 it not. *Quid aliud exirio Lacedemoniis et Atheniēsis  
 fuit quāquā armis pollerēt, nisi qđ victos p alienigenis  
 arcebant?*

## The eight Chapter.

p) Tacit. lib.  
11, annal.

*arcebant* P: Amongst the Romanes at the first none were admitted into their citie, but such as did inhabite in that part of *Italie*, which was called *Latiū*: afterwarde it was imparted to the other people of *Italie*, such as dwelt beyond the riuier *Poe*, and the *Alpes*, and the sea. *Claudius Caesar* bestowed the freedome of the citie vpon many barbarous nations: and vnder these Emperours which were Spaniardes, Thracians, Affricans by little & little whole prouinces, yea and the whole Romane empire was endowed with the freedom and liberties of the citie: whereupon that speech was vttered, *Romanus ubicunque vicit, habitat*: and whereas at the first all nations beside the Grecians were accompted Barbarians, yea euen the Romanes, who afterward were Lords of all, and being Lords did exempt themselues and other nations which they had conquered frō such reproch, and then they onely were noted for barbarous who liued not vnder the Romane Empire: wherefore *Rhenus* was said to haue two banks, the furthestmost of which was allotted to the Barbarians, the nearer to the Romanes, according to the saying of *Claudian*:

q) Herodian.  
Spart. Eutrop.

*O quoties doluit Rhenus, quā barbarus ibat.  
Quod se non geminis frueretur iudice ripis.*

And that which *Tacitus* saith, that the Romanes did grant vnto the Rhemenses, the Lingones, the Bituriges, the Meldinenses, the Xantones, & the Hedui

## The eighth Chapter. 55

Hedui free people of *Fraunce*, the liberties & free use of their citie (*the suffrage & giuing voice at the election of Magistrates and Officers onelie excepted and foreprised*) it is more plainlie and vnderstandinglie opened by *Liue* in these wordes: *Iam inde morem Romanis colendis socios, ex quibus alios in ciuitatem atq; æquum ius acceperunt, alios in ea fortuna haberent, ut scirej este quàm cines mallent*<sup>r</sup>. <sup>r) Liui. lib. 26.</sup>

Though *Augustus Caesar* at the first blossoming of the *Romane Empire* did make some scruple to enfranchise straungers, and to admit them into the Citie of *Rome*: Neither would he bestow the liberties vpon a Frenchman, though earnestlie requested by his Empresse *Linia*, whom he dearelie loued, disallowing the act of *C. Caesar* his adoptiue father, who enfranchised a whole legion of his French soldiers, and reprooued likewise *M. Antonius* for selling the liberties of the citie vnto the *Sicilians* for money<sup>t</sup>. Yet his posteritie was not so precise, but did abundantlie admit straungers: For *Antonius pius* did enfranchise all that were subiect to the citie of *Rome*, that *Rome* might be the common countrie of all Nations<sup>t</sup>, imitating perhaps *Alexander magnus*, who accompted the whole world a common Citie, and his pavilion the tower of the citie<sup>m</sup>. And *Seuerus* did graunt to the citizens of *Alexandria*, that they might be Senators of *Rome*, and that other *Ægyptians* should not be free of the citie of *Rome*, vnlesse they were before free men of *Alexandria*<sup>n</sup>.

<sup>t</sup>) Tranquil. in vit. August.

<sup>t</sup>) L. in orbe de statu ho. ff.

<sup>l</sup>) Rom. ad municip. ff.  
<sup>m</sup>) Plut. in Alex.

## The eighth Chapter.

n) Plin. lib. 10. epist. <sup>a</sup> The *Heluesians* did bestow the liberties of their citie vpon *Lewis* the eleuenth, and other kinges of *Fraunce*. And *Artaxerxes* the king of the *Persians* did graunt such liberties to the whole familie of the *Pelopida*. So the *Athenians* did make free of their citie *Euagoras* king of *Cyprus*, *Dionysius* the tyran of *Sicilie*, *Antigonus* and *Demetrius* the kinges of *Asia*, yea euen all the *Rhodians* <sup>q</sup>: which the *Rhodians* requited with like curtesie, which was nothing else but a comburgeosie, such as *Bodin* <sup>r</sup> reporteth to haue been made betwixt them of *Valoys*, and certaine towneships of the *Heluetians*: Betwixt the men of *Berne*, and them of *Friburge*: Betwixt them of *Geneua*, & them of *Berne*. The nature of which comburgeosie is, that there should be mutuall communitie of their cities, and mutuall league of friendship betwixt them; And if any of these so leagued in societie should forsake their citie, and come to the citie of them with whom they were in league, they should be *ipso facto* Citizens without any speciall enfranchisement, enroulment, cooptation, or any other circumstance: before which time they were not subiect to the commaunde and Lawes of that citie, but were onelie *Ciues honorarij*, as *Hercules* and *Alexander magnus* were of *Corinth*. Such a league of societie as seemeth by the yere booke to haue been contracted betwixt the Citizens of *Lincolne*, and them of the towne of *Derbie*, that they of *Lincolne* should be quite from murage, pon-

o) Bodin. lib. 1. de rep. c. 6.

p) Plut. in pelopi.

q) Litiuis

r) Bodin. vbi sup.

## The eighth Chapter. 56

pontage, custome, and tolle, within the village of *Derbie*, for all kind of merchandize <sup>f) 48.E.3.17.</sup>. This was the difference betwixt *veri* and *honorarij ciues*: the former were subiect to the Lawes, orders, and charges of the citie: the other were not. *Plutarch* <sup>t) Plut. in Solon.</sup> wondreth at *Solon*, in that he made a Law, that all straungers should be barred from the liberties of the citie of *Athens*, except it were such as were in exile: but indeed he perceiued not *Solons* meaning, being a man of deeper reach then *Plutarch*, as also was *Polybius*, and *Thucydides*, and *Dionysius*, of *Halicarnassus* amongst the *Gracians* his countrymen, whom notwithstanding in learning, wit, and eloquence he exceeded: for *Solon* his purpose was in the making of that Law, that none should enioy the liberties of the citie, but such as should be bound and subiect to the Lawes of the Citie. And there was likewise an other difference betwixt *veri* and *honorarij Ciues*: for they which were *veri ciues* did loofe the liberties of the citie of *Rome*, whensoever they did purchase the freedom of any other citie: Which may appeare by this, that though *Pomponius Atticus* being borne in the citie of *Rome*, was a citizen of *Rome*, and more then that, beeing a Senators sonne, was *eques Romanus*, who was therefore called *Atticus*, because hee had the *Athenians* in such reuerence and estimation (a man of great byrth: for three Emperours doe referre their originall to him, <sup>u) Senec. in epist. ad Lucil.</sup>) yet this man could not bee made a citizen

## The eighth Chapter.

u) Senec. in  
epist. ad Lucil.

w) Cornel.  
Nep. in vit.  
Attic.

citizen of *Athens*, least (as *Cornelius Nepos* reporteth the plain truth <sup>u)</sup>) he should loose his freedom of the citie of *Rome*. But as to them which were *honorary ciues*, if they were enfranchised of a hundred cities, yet they could not loose their freedom of any. In *England* not Cities onelie admit others to their liberties, but verie *Societies of Students*; as namelie the houses of Court, and to mine owne knowledge, the worthie societie of *Graies Inne*, to which be admitted such a number of excellent noble men, great diuines, surpassing gentlemen, whereof some haue sued and been desirous to be admitted: other some haue rather been called, then ordinarilie conformed, for their preeminence and worth, according to the rule of *Salomon*: *As is the fining pot for siluer, and the furnace for gold, so is euery man according to his dignitie*. I pray God *this fining pot may still continue her siluer of Learning and Law*. I beseech him likewise that this *furnace of gold*, may still seuer the gold from the drosse, that is religion and loialtie, from *paganisme and papisme*: which hitherto, the Lord be praised, it hath done. But to retourne to my purpose of handling the nature and properties of Cities and Corporations, Though in the generaltie of admittance all common weales haue accorded, yet in the speciall maner of admittance they haue dissented and varied: For in *Athens* they could not bestow their franchise vpon anie without the suffrage and voice of a thousand citizens

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zens at the least <sup>a</sup>. But in such places and regions, which by reason of the barrennes of the soyle, or by reason of the distemperature of the ayre, are not verie well habitable, not onelie the originarie inhabitants, but euen straungers and aliens are forbidden by the Rulers of the places to depart out of them: As namelie in *Moscovia* <sup>b</sup>, *Tartaria*, and *Æthiopia* <sup>c</sup>: But amongest the *Venetians* and *Rhagusiens* none can be admitted to their cities, vnlesse it be for a great summe of money, or some principall desert. But now sithence we haue spoken sufficientlie of Corporations in generall, let vs examine the first foundation and beginning of guildes and fraternities, which as Corporations do support the good estate of a Realme; so they do preferue the good estate of Corporations. These Fraternities are deriued of the greeke word *πρωτο*, which is to be interpreted a well, or pit: for in drinking at one pit or well societie was at the first contracted: thence is deriued *πρωτο* *φρατερνιτις*. So likewise *Pagi*, towneships, are deriued of the *Doricke* word *παια*, which signifieth a fountaine, and in the *Atticall* dialect is *παια*. By the meeting together at the first at one water or fountaine grew loue betwixt man and wife, then betwixt brethren and sisters, then betwixt vncles and nephewes, then grew affinitie: All which would haue been colde, if there had not beene corporations, colleges, guildes, fraternities, and societies created and established. By

<sup>a</sup>) Demosth.  
contr. Eubalid.

<sup>b</sup>) Sigif. in  
hist. Moscho.

<sup>c</sup>) Francisc.  
Aluarez. in  
hist. Æthiop.

Q

the

## The eight Chapter.

the common Law, no Corporations can be made  
 but by the king, yet his highnes may depute  
 this authoritie to an other, for so it commeth  
 originally from the king: howsoever *Maſt. Ke-  
 ble* his opinion is, that a Corporation must be  
 made by the kinges expresse and immediate  
 wordes<sup>d</sup>. But 22. *Edwardi 4.* and 20. *Hen. 7.* the  
 opinion of *Read* is to the contrarie<sup>e</sup>, and both  
*Maſt. Fitzherbert*, and *Maſt. Brooke*<sup>g</sup> abridging  
 the case, are in this contrarie to *Maſt. Keble*:  
 And so is the opinion of *Choke* and *Brian*, that  
 if before the dissolution of Abbeyes, the king  
 had licenced one to make a Chaunterie for a  
 chaunterie Priest, and to giue vnto him and his  
 successors certaine land, this had been a good  
 Corporation<sup>h</sup>. But to all vnlawfull Corporati-  
 ons, all giftes, grauntes, fines, and feoffements  
 are made voide by the Satute of 23. *Hen. 8. cap.*  
*10*. The first Lawmakers and founders of com-  
 mon weales, at the first did accompt no foun-  
 dation more stable to support a common weale  
 then societies and fraternities. For *Numa Pom-  
 pilius* the king of the *Romanes* did ordeine cer-  
 taine guildes of workmen and merchants, and  
 did binde them by solemne sacrifices and feasts,  
 which might be at certaine set daies celebrated  
 to preferue loue, and friendship amongst the  
 people, that they might with more ioy and com-  
 fort proceede in their priuate and publike af-  
 faires<sup>i</sup>: And this he seemeth to haue done by

*Solons*

d) 2.H.7.13.

e) 22. E. 4.

Graunts 30.

20.H.7.7.

f) Fitzherb.

Graunts 36.

g) Br. Parents

44.

h) 21.E.4.56.

i) Plut. in  
 Num. Dio-  
 nys. Halicar.  
 lib. 2.

## The eight Chapter. 58

*Solons* example, who made fraternities of all sorts of men, and permitted them to make Lawes touching their fraternities, so they were not contrarie to the Law publicly receiued<sup>k</sup>. But *Lycurgus* did not prescribe certaine feastes to be obserued, but continuall meetings and comeffations, that friendship might not at any time be intermitted. In other cities of Greece, societies called *synagias*, and throughout all Italie *sodalities* were obserued. To this end and purpose the *Cretensians* of all ages, orders, and sexe, did banquet together in publicke place<sup>l</sup>. And in the famous Citie of *London*, there is annuall and solemne obseruation of their feastes in euery guild, which might lie preserueth the wealth, tranquillitie, and flourishing estate of that citie. Neither is this custome dissonant from God his owne ordinance in the Iewish common weale, who appointed certaine feastes and sacrifices to be obserued of the Iewes, that religion towards God, and friendship amongst men might bee maintained<sup>m</sup>. But as to the making of priuate Lawes by such guildes and fraternities, *Solons* Law abouesaid hath been obserued almost of all common weales: But the Statute of 15. *Henr. 6.* giueth somewhat a larger scope to guildes and fraternities in these wordes: *Guildes, and fraternities, and companies incorporate shall not make, nor vse any ordinance, which may be to the diminution of the Kinges fraunchise, or of other fraunchises, or against the common profit of the people,*

unlessse

<sup>k</sup>) Plut. in Solon.

<sup>l</sup>) Arist. in poet. lib.

<sup>m</sup>) Numer. 1. Leuit. 23.

## The eighth Chapter.

vnlesse it be first discussed by the Iustices of peace, or the chiefe gouernors of the village, and before them entred of recorde &c. But when I speake of colledges, companies, meetings, feastings, and assemblies, I doe with the maine force of my hart exclude vnlawfull societies, conuenticles, and secreat meetings of male-contents, phantastical, and priuate humored persons: But to colledges, fraternities, and companies erected and created by Law, I see no reason but that landes and yearelie maintenance may be giuen and allowed vnto them: yet not without the Princes permission, who for some speciall causes fore-seene may stoppe and hinder such donations: And therefore wiselie by diuers Statutes in this Realme is remedie provided against this, and a writ of *Ad quod damnum* deuised<sup>n</sup>. *Anthonius* the Emperour did first of all permit legacies and donations to bee made to colledges and companies, excepting the colleges of the Iewes, whom notwithstanding hee suffered to meete together, and to haue their synagoges for religious vse<sup>o</sup>. *Alexander magnus* did bestowe vppon his citie *Alexandria*, built at the seauen-folde mouth of *Nilus*, manie great priuiledges, fraunchises, and immunities<sup>p</sup>. So *Frauncis* the first, being the founder of that citie which standeth at the mouth of *Sequana*, gaue great immunitie to such as should inhabite it<sup>q</sup>. And so diuerse of our kings of *England* haue bestowed

n) Statut. de Religios. 18. E. 3. pro clero. cap. 3. 15. R. 2. cap. 5.

o) L. 1. de Iud. C.

p) Ioseph. lib. 3. bel. Iud.

q) Bodin. lib. 1. de republ. c. 6.

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bestowed many liberties franchises and benefits vpon seuerall citties, which *M. Camden* hath verie profitably & very learnedly amongst other things in their due places set downe, whome I need not further cominende to my country-men of *England*, to whom by his great worth and desert he is more deare and precious.

*Quàm si illum Veneris commendes epistola Marti.*

But I will further proceed in shewing the great prerogatiues graunted by princes and other supreme estates to citties and corporations: In all ages and all common weales cities and corporations haue not only had their courts, folkemote, and the like, but euen common counsels (as they are commonly tearmed) and publike meetinges for the generall good of the corporations. For as great profite doth arise by such societies and meetinges: so nothing doth more debilitate and weaken the state of a common weale then the taking away of such Counsels: therefore the Romanes, when they had ouercome *Macedonia*, because they would make the estate of it weake and impuissant, they did vtterly forbidde all common Counsels, and publike meetinges: so they did when they had ouercome the Acheans: *Memmius the Consull* (saith *Liui*) did dissolue all the common counsels of the particular nations of *Achaia*, and of the *Phocensians* and *Boeotians*, and the other partes of *Greece*: But when these regions and prouinces were sufficiently quieted and soundly knit to the

<sup>1)</sup> *Liui. lib. 35*

## The eight Chapter.

bodie of the Romane Empire : then (as *Strabo* reporteth ) their auncient Councels were restored vnto them : but the Romanes did neuer alter the liberties of any citie vnlesse they were abused to their hurt, as appereth by the words of *Florus*: *Criolans causa belli, qui libertate a Romanis data aduersus ipsos usus est*: Neither were the liberties of the *Ætolians* impeached vntill they reuolted to *Antiochus*, as *Iustin* sheweth: *Offensi Ætoli, quod non ex arbitrio eorum Macedonia quoque adempta Phillippo, & data sibi in præmium belli esset, Antiochum in Romana bella impellunt*. And such abuses many times happen in cities : for as *Linie* that excellent writer, in wit diligence and history, matched by none : in wisedome and grauitie by very few, in pietie ouercome onely of one of the heathens, and but of one in eloquence well auoucheth : *Nulla est ciuitas quæ non et improbos ciues aliquando, & imperitam multitudinem semper habeat* : but as they did fauour lawfull and conuenient counsels, so vnlawfull and secrete conuenticles they did greatly abhorre : wherefore the nocturnall meeting at the sacrifice of *Bacchus* was iustly abjudicated and disanulled by the whole Senate: & the conuenticle of the black-religioned Brownists by the L. Archbishop of *Canterburie*, & the high Commissioners, who though a greater number of them were women & pretended themselues to be harmeles, & vnapt to do hurt, yet as *Linie* saith; *A nullo non genere summum periculum est, si cæsus*

1) *Flor.* lib. 2.

2) *Iustin.* lib. 3.

3) *Varro.*

4) *Cicero.*

5) *Liui.* lib. 45.

C

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*& consilia et secretas consultationes esse suas* <sup>x)</sup>: And <sup>x) Liui. lib. 34.</sup>  
 this ought especially to be feared and preuented,  
 whē contumelious contumacy is vailed with the  
 shadow of religion and reformation: for as the  
 same *Linie* saith againe very well: *Nihil in speciem*  
*fallacius praua religione, ubi deorum numen prætendi-*  
*tur sceleribus, subit animum timor* <sup>y)</sup>: O lord how <sup>y) Liui. lib. 39.</sup>  
 long shall Sathan abuse the soules created by thee  
 with a vaine sophistrie in steade of true religion!  
 and such societies, and such families, whether of  
 loue, or of lust, I can not well define, which de-  
 light in *latebris*, are worthy to be sent *ad carceres*,  
 that they may there liue in *tenebris*: for it is fit to  
 send corrupt humors, which ouerloden and pe-  
 ster the bodie in *latrinam*: For surely such Fana-  
 tickes may doe as great hurt in a common weale  
 as the Pythagoreans did in *Greece* and *Italie*, who  
 pretending themselues to bee professors of wise-  
 dome did bring a great number to the admiration  
 and imitation of them: and finding such strength  
 in the weakenesse of the multitude, they beganne  
 to plant their ramme and sette their force against  
 kingdomes & common weales, and had thought  
 vtterly to haue subuerted them, but their com-  
 panies were quickly disperfed, and the greatest  
 parte of these companions was destroyed by fire  
 and sword <sup>a)</sup>: Now to speake somewhat of the li-  
 berties of a citie. *S. Paul* when he was by the com-  
 mandemēt of the magistrates apprehended, being  
 accused that he troubled the publike tranquillitie  
 by

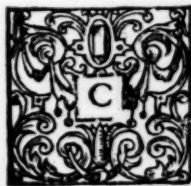
<sup>a) Polyb. li. 3.</sup>

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- by seditious assemblies, professing himselfe to bee a citizen of *Rome* hee appealed to *Caesar* <sup>b</sup> though hee were by nation a Cilician, by blood an Israelite, by tribe a Beniaminite, yet because his father had beene a citizen of *Rome*: the liberties were afforded vnto him: he likewise, when he was commanded to be scourged pleaded for himselfe that he was a *Romane* <sup>d</sup>. But because the abundance of liberties of all the cities of *Asia*, *Africke* and *Europa*, are sufficiently knowne, I will not stay any longer vpon this point, but wil passe to matters of greater importance, and more difficultie.
- b) Act. 25. v. 11
- c) Acto. 22. v. 28.
- d) ibid. v. 25.

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*That the distinguishing of demesnes, & the difference of the degrees & callings of men, is according to the law of nations.*



Onfusion breedeth alwaies contention, partition peace, according to the old prouerb, *Diuide et impera*: for which cause our ancestors did thinke it best to distinguish their dominions and inheritances by lottes and boundaries, as *Abraham* & *Lot* in *Palestine*, *Masinissa* and the *Carthaginians* in *Nuridia* and *Mauritania*, the *Romanes* and *Nolanes* in *Italie*, the *Romanes* and *Carthaginians* in *Spainne* and

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and *Sicilie*, the Emperour *Valens* and the Gothes in *Missia*, and the regions on this side *Danubius*, &c through the whole tracte of the Romane Empire was a partition made by *Theodosius* betwixt his sonne *Archadius* whom he prefected ouer *Bizance* and all the orientall partes : and his other sonne *Honorius*, to whom he allotted *Roome*, and all the occidentall countries : and so *Darius* would haue made a partition with *Alexander* of the whole world, that the one of them shold haue all on the one side of *Euphrates* : the other all on the other side, yet in the first age and infancie of the world this kind of partition was vnused and vnknowne, as may appeare by these authorities first of *Virgill*, who saith :

*Ne signare quidem aut pariri limite campum  
Faserat.* <sup>a</sup>

a) Virgi.  
Georg. 1.

And of *Tibullus* :

*non fixus in agris*

*Qui regeret certis finibus arua lapis* <sup>b</sup>.

b) Tibul. 1.  
Elegi 3.

And that of *Seneca* :

*Nullus in campo sacer*

*Diuisit agros arbiter populis lapis* <sup>c</sup>.

c) Senec. in  
Hippolict. 2.

yet the case was altered when *Ouid* writ thus :

*Gentibus est alijs tellus data limite certo :*

*Romana spatium est urbis & orbis idem* <sup>d</sup>.

d) Ouid. 2.  
Fasto.

And vpon good reason was it altered, for as *Boetius* saith well : *Dimensiones terrarum, terminis po-*

R

sitis

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e) Boeti. in  
geomet.

f) Plut. in  
Num.  
& pr. R. 15.

g) Plut. in  
Num.

h) Deut. 17. 17  
Prou. 23. v. 28.  
& 23. v. 10.

*sitis vagantibus, ac discordantibus populis pacis utilia prastiterunt* <sup>e</sup>: And the great vse of limits and boundaries *Plutarch* sheweth, when he condemneth the vnsatiable couetousnes and illimited encroachment or inuasion of *Romulus* verie wittily: *Noluit Romulus mensurâ proprij agri proderè mensuram alieni siquidem virium compedes terminos esse nouis seruarentur, & iniuria iudicium, si non seruarentur* <sup>f</sup>. And this was the cause that *Numa Pompilius* the king of the Romanes did cause as well a publik perambulation to be made throughout his whole kingdome as priuate limitations & bounds betwixt partie & partie, and for the more solemne and effectuall confirmation and establishing of this course he did dedicate a chappell vpo the top of the *Tarpeian* hill vnto *Terminus*, and this idoll was made of stone <sup>g</sup>: He was set in a chappell as not fit to be remoued: hee was made of stone as hard to be remoued: he was placed vpon a high rocke as not possible to bee remoued: and to this idoll nothing was sacrificed but cakes, pulse, and the first fruites of the field: the meaning doubtles of *Numa* was good, if it had not beene signified, & set forth by an euill meane. For to make him immoueable was to good purpose and agreeable to the truth of diuine iustice: Wherefore *Salomon* saith: that which also is commaunded in *Deuteronomie*: *Thou shalt not remoue the auncient boundes which thy fathers haue made* <sup>h</sup>: but the manner of diuiding lands & dominions according to the

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the custome of nations is fully set downe by M.  
*Littleton*, though applyed to another purpose, &  
 it is five-fold: 1. By setting out an equal rate of the  
 lands to be diuided. 2. By the agreement of friends  
 or intermediation of others. 3. By casting lots. 4.  
 By writ *de partitione facienda* at the commō law, &  
 the action *de heriscunda familia* at the ciuill law. 5.  
 By making an vnequall partition equall, by a for-  
 rein referuation<sup>i</sup>. Distinctions likewise of the de-  
 grees of men hath beene in all nations, in all ages  
 established obserued and vsed. For the aduancing  
 of noble men aboue them of lesse note; and the  
 preferring of the gentleman before the yeoman,  
 and peasant is very ancient, and hath beene vni-  
 formely reteinēd: neither is it to bee maruelled  
 at, for nature her selfe hath taught the nations her  
 schollers this lesson. Trauaile through all her  
 kingdome, that is through the whole world, you  
 shall find this difference in force and of great va-  
 lilitie. Consider the scituation of the celestiaall  
 orbes, and ye shall note, that the fierie heauen is  
 placed aboue the chrystalline, as more worthie,  
 both these aboue the firmament, the firmament  
 aboue the other Spheares as surpassing them:  
 Marke the birdes of the ayre, ye shall perceyue  
 that the *Eagle*, the *Phanix*, and the *Parott* holde  
 preheminence aboue the rest. Looke vpon the  
 riuers, ye shall obserue *Euphrates* in his forme and  
 compasse of his streame to be more excellent then  
*Ganges*: *Ganges* better then *Danubius*, *Danubius*

i) Littleton, lib.  
 3. c. 1.

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· better then *Tagus*, *Tagus* then *Padus*, *Padus* then  
· *Tempse*, *Tempse* then *Seuerne*: Note the fishes of  
· the sea: yea shall find these to haue place aboue  
· the rest the *Whale*, the *Dolphin*, the *Sturgeon*, the  
· *Salmon*, and the *Conger*. Cast an eye vpon the  
· beastes of the field, the Lyons, the Pardes, the E-  
· lephants, and Panthers do excell: looke into the  
· bowels & matrice of the earth, ye shall haue gold,  
· siluer, brasse, to exceed all other mettals: search in-  
· to the inwards and the very closet of nature, the  
· best of the grosser stones are the Loadstone, the  
· marble, and the Alabaster: amongst the precious  
· stones, the Diamond, the Topas, the Turkoise, the  
· Smaragde, the Saphire & the Chrysolite. Where-  
· fore the difference of estates, & degrees is well li-  
· mited and expressed by the custome of nations &  
· the discrepance betwixt noble and ignoble well  
· constituted, which first I will generally handle, &  
· as it were opening the signification of the words:  
· and afterward more fully & particularly as draw-  
· ing it in a map by pencill. This world *nobilis* if it  
· be generally taken, extendeth as wel to gentlemen  
· as to them which by preheminence we cal noble;  
· for *nobilis* is *quasi nescibilis* either for his stocke, or  
· for vertue: the nobilitie of stocke or bloud hath  
· been more obserued of the Hebrews & Grecians;  
· of vertue by the Romanes, and them of the Nor-  
· therne regions: & so he hath beene accompted ig-  
· noble, who hath not beene known, nor noted for  
· some eminency, & rarenes, according to the verse:

*Solus*

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63

*Solus ubi in siluis Italus ignobilis auum,*

*Exigerit :*

Amongest the *Gracians* at the first, they onelie were accompted noble, who could deriue their pedigrees from kings or princes, or some other great and famous men; as from *Hercules*, *Cecrops*, *Æacus*, and the like, or such as by publike decree, and singuler demerit had obtained a crowne of gold, or some statue to be erected for them: And amongest the *Jewes*, they onelie were accompted noble, which descended from the stocke of *Aaron*, or the kings of *Israell* and *Iuda*. But the *Romanes* were farre otherwise minded: for as *Salust* saith, *Hostem ferire, murum ascendere, conspici dum tale facinus facerent properabant, eas diuitias, eamque bonam famam magnam nobilitatem putabant*<sup>a</sup>. And an other *Romane* saith, *Genus qui laudat suum aliena laudat*<sup>b</sup>. And an other namelie *Ouid*: *Nam genus et proavos quæ non fecimus ipsi vix ea nostra voco*, which golden saying so much pleased that worthie and noble knight *Sir Philip Sidney*, *Learninges champion*, *Englands miracle*, *Europes fauorite*, of whom the wordes of *Horace* may be verified, if euer they might be truely pronounced of any:

*Dignum laude virum Musa vetat mori.*

I say they so much pleased him, that he vsed them for a mot: And I know not whether *Ouid* his inuention, or *Sir Phillippes* election be more to be commended: And nobilitie without vertue and

a) *Salust. in Jugurth.*

b) *Senec.*

\* *Ouid. Metamorph. lib. 13.*

## The ninth Chapter.

merit was accompted as an image without life: For *Salust* saith, *Reliqui sunt inertissimi nobiles, in quibus sicut in statua prae se nomen nihil est addita- menti*: for what difference was there betwixt *Ciceroes* statue, and *Ciceroes* drunken sonne, sithence both of them had the name, neither of them the qualities of *Cicero*. But as well the *Gracians* as the *Romanes* did agree in this, that for the rewarding of vertue, and the honoring of desert, and the animating of others, they did allow Scutchions and Armorie, Crestes and Cognisances to men of speciall note: Which our auncestors (saith *Plinie*) the representations of their dead fashers were proposed to view, their countenances were resembled and engrailed in their Armorie, that there might be some ornaments to decke and beautifie the celebration of publike funerall.

Now to speake more particularlie of the degrees of men, according to the Law of Nations: The degrees of Citizens are to be vnderstood these, which make a difference by state or place, not by sexe as *Bodinus* grosselie imagineth<sup>c</sup>: for if there were none but males in a citie, yet it should be a citie: otherwise how was *Rome* a citie before the entermariage of that people with the *Sabine* dames<sup>d</sup>. By the customes of *Perusia* and *Florence* euery one that followeth the stander, and is initiated & entred into militarie profession doth presentlie of a yeoman become a gentleman<sup>e</sup>. But in *Fraunce* as *Bodinus* reporteth, gentrie is not gained

c) Bodin. lib. 3.  
de rep. c. 8.

d) Lini. lib. 1.

e) Bartol. in  
lib. 1. de dig-  
nit. ciu.

## The ninth Chapter. 64

gained by vndertaking seruice in warre, but by continuing in the same: if their issue or posteritie do also mannage armes, their issue and posteritie are reputed gentlemen<sup>f</sup>. But the *Venetians* doe measure gentrie and nobilitie by Senatorie state: yet I take it to be after the maner of the auncient *Romanes*, who did not accompt any *Equitem Romanum*, which was not a Senators sonne: yet manie meere soldiers were admitted of the Senate: Which facilitie of the *Romanes* in bestowing dignities, did afterwards turne to their great daunger and molestation: for *C. Marius* was onely a soldier, hauing spent his verie Consulships, euen fixe Consulships in warres, and the seauenth should not haue been vnlike to the rest, if God had not preuented him by death: and continuallie before that time hee was employed in warre, either vnder *Scipio* the sonne of *Paulus Aemilius*, or some other great Capitaine: But this man being more in conuaie then counsell, did more hurt then profite the *Romane* common weale. So did *Iulius Caesar*: so did *M. Antonius*, though these later were somewhat more then meere souldiers. But amongst the *Aegyptians* none could be souldiers, but the *Calasyri*, and many yeares after when it was vnder the dominion of the *Sultanes*, the *Memmeluci*, who therefore had speciall immunities & liberties graunted vnto them: but a meere souldier amongst the auncient *Romanes*, though he were of excellent desert, yet was accompted but a

f) Bodin. lib.  
3. de repub.  
c.8.

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but as a plebeian, and not noble, which may easily appear by the speech of *L. Siccinius Dentatus* made in the Senate house, who boasted that he had serued in warre fortie yeares for his countrie, that he had fought in an hundred and twentie battailes, that he had receiued fortie and fiue woundes, and twelue of them in one day, and all of them *aduerso corpore* encountering the enimie face to face, that he had purchased fourteene cibicall crownes, three obsidionall, foure-score and three golden chaynes, a hundred and three-score golden bracelets, ten goodlie speares, fiue and twenty faire and costlie arming saddles <sup>g</sup>: Yet this man hauing no other meanes to attaine to gentrie and nobilitie, was accompted of them in the number of ignoble persons <sup>h</sup>. *Augustus Caesar* a notable wise Emperour did supplie the want of Senators with rich men <sup>i</sup>, though not verie wise, because he perceiued that the notable order of Senators, which stoode much vpon cost and expence, (wherupon I am perswaded these wordes issued from him, *Duas habeo superbas filias, Iuliam et Rempub.* <sup>k</sup>) would otherwise vtterlie fall to the ground: But in other respectes he did wholie fauour such as vertue had ennobled. For *Æmilius Scaurus*, though he were a poore man (pouertie is no dishonestie) yet he was noble <sup>l</sup>, for sometime nobilitie is seuered from riches: Therefore *Tacitus* saith of *Cassius*, and *Syllanus*: *Alter opibus uetustis, alter generis claritudine excelebat*: yet a man may be noble, and

<sup>g</sup>) Dionys.  
Halycar.

<sup>h</sup>) Salust. in  
bel. Iugurth.  
loq. de Mar.

<sup>i</sup>) Tranquil. in  
August.

<sup>k</sup>) Macrob.  
in Saturnal.

<sup>l</sup>) Valer. Max.  
lib. 2.

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and verie rich, as *Tullie* saith of *Roscus*, That he was, *nobilitate et pecunia municipij facile primus*. But it is good to be knowen whether base artificers are to be enseated, and bestowed in places of worth and credite. *Xenophon* reporteth that amongest the *Egyptians*, *Scythians*, *Persians*, *Lacedamonians*, *Corinthians*, they which did vse base and mechanicall trades were excluded from places of accompt, and were accompted ignoble<sup>m</sup>. *Aristotle* likewise writeth, that amongest the *Thebanes* it was a Law, that no man could be admitted to place of honor, vnlesse he had left off merchandize by the space of tenne yeares before<sup>n</sup>. And the *Romanes* followed them in this: for as *Liue* saith, *Questus omnis indecorus patribus visus est*. And *Hippolytus* a collibus writeth, that it hath been generallie receiued, that whosoever is a gentleman, or possessed of an honorable estate, beginneth presentlie to be ignoble by vsing merchandize, vnlesse it be otherwise prouided by the Statutes of some particular Prouinces or Cities: as by the Statutes of *Venice*, of *Florence*, of *Genoa*, of *Luca*, and of *London*, where manie of their *Senators*, *magnificoes*, *clarissimoes*, *illustrissimoes* are Merchants<sup>o</sup>. And it is the rule of a diuine, morall, and politike writer, that husbandmen, carpenters, potters, caruers either in wood or stone, and the like workmen, are wholie to be debarred from honorable or iudiciall places<sup>p</sup>. And by the imperiall Lawes, Merchants may not be aduanced

m) *Xenoph. in ecumen.*

n) *Aristo. in polit.*

o) *Hippolyt. 2 collib. in lib. de princip.*

p) *Ecclesi. c. 38.*

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p) L. ne quis  
de dignit. C.  
L. si cohortat.  
de cohort.  
L. humil. de  
incest. C.

q) L. r. negoti-  
ator. ne milit.  
C.

r) In lib. de  
legi.

s) Lib. 7. po-  
lit. c. 9.

t) Philostrat.

u) Cicer. lib. 1.  
offic.

a) Cicer. 3. de  
repub.

b) Luca. lib. 10

c) Cicer. 3. de  
rep.

d) D. August.  
lib. 4. de ciui-  
tat. dei.

e) Alci. 1.  
conf. 1.

ced to anie honorable estate<sup>p</sup> : neither might they haue anie regiment of souldiers<sup>q</sup>. And *Plato*<sup>r</sup>, *Aristotle*<sup>s</sup> and *Apollonius*<sup>t</sup>, doe hold merchandizing to be an enemy to vertue. Neither will *Ciceroes* distinction be of anie force against them, where hee saith : *Mercatura si tenuis est, sordida putanda est : si magna, et copiosa, multa undique apportans, multisq; sine vanitate impartiens, non est admodum vituperanda*<sup>u</sup> : For though his commendation of merchandizing bee not verie great : yet his opinion in this is not greatlie good : for *Maius et minus non variant speciem*. And the ironickall saying of the pyrate to *Alexander*, was a confutation of this distinction<sup>a</sup>, who tolde him in plaine tearmes, *That because he did robbe on the Sea with one small pinnasse, he was accompted a pyrate : but because Alexander did the same with manie great Gallies, therefore he was rearmed the gouernour of a fleete* : For as *Lucan* saith well : *Facinus quos inquinat aequat*. And the same *Lucan* calleth *Alexander*<sup>b</sup>, *Felicem predonem*, a fortunate Robber : And this aunswere of the pyrate to *Alexander* is liked of *Cicero* himselfe<sup>c</sup>, of *S. Augustine*<sup>d</sup>, and *Alciat*<sup>e</sup>.

Likewise it hath been a question sometime sifted, whether he that vseth husbandrie may properlie, and in strict reason bee accompted a Gentleman. In the common Law wee haue this rule, that where a Gentleman is sued by the

the

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the name of Husbandman, he maie saie, that he is a gentleman, and demaunde iudgement of the writte, without saying that he is no husbandman: for though a gentleman may be an husbandman by the said Law, yet he ought to be sued by his more worthie addition<sup>f</sup>. Neither doth our Law in this dissent from the practice of other Nations. For *Cyrus* did verie often boast of his labour, and industrie in matters of husbandrie<sup>g</sup>. And these noble Romanes, *Serranus*, *Curius*, *Cincinnatus*, *Torquatus*, and *Cato*, are commended of Historians and others, for this that they did establish the safetie of the common weale by their handes, which were worne and growne rough by the plough, and labour of husbandrie<sup>h</sup>. In *Jewrie* and *Egypt* how much it hath been esteemed may appeare by this, that neither could *Pharaoh* please *Iacob* more to his contentment: Neither could *Ioseph* procure a greater pleasure vnto him, then the meadow ground, and pasture of *Gozan*, in which hee inioyed the comfort of his age. In *Scythia*, *Arabia*, *Parthia*, *Aracadia*, and other places, as *India*, *Thracia*, *Mesopotamia*, *Sicilia*, &c. Husbandrie hath been greatly practized, and in other Nations not so much addicted to husbandry, exceedingly praised. Diuines haue in all ages & countries possessed the reputation, either of gentlemen, or of reuerend, right

f) 14.H.6.19.

1.E.4.2.

21.H.6.35.

12.H.6.8.

g) Cicer. lib. de senect.

h) Valer. Max.

Varro.

Cicer.

Liui.

Florus.

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reuerend worshipfull, and right worshipfull men,  
and that vpon good reason, which by and by,  
(God giuing leaue) I will demonstrate. Whether  
Phisitions may beare anie of these aforesaid titles  
or no, it hath been in all ages questioned, in some  
debated, in this decided: Though amongst the  
auncient *Romanes*, phisicke was accompted base  
and sordid by the space of fixe hundred yeares<sup>i</sup>:  
yet about the imperiall time it was receiued into  
the citie<sup>k</sup>, and highlie esteemed. But the *Hebrewes*  
and *Gracians* did alwaies make great accompt of  
the professors of that sciencē, and so did other  
nations also, when the *Arabians* first of all had fe-  
uered Surgeans, Emperickes, and ignorant Apo-  
thecaries from Phisitions: But let their accompt  
be great in a citie or common weale, yet they must  
giue place to the profession of the Law, as being  
a princelie discipline, the center of common  
weales, and the science of gouernment, as I haue  
at large shewed in the first Chapter of my direction  
to the studie of the Law: And this euen Philoso-  
phers haue adiudged<sup>l</sup>.

But now whether meere *Grammarians* and *Rhe-  
toricians*, I meane sole & single professors of these  
Artes may challenge to themselues the title of gen-  
trie and worship, it hath verie much been doub-  
ted. *Cicero* saith of *Rhetoricians*: *Rhetores M. Crasso,*  
*et Domitio Censoribus, claudere ludum impudentia*  
*inusi*<sup>m</sup>: But after his time it was receiued into  
the citie, and obtained manie great immunities:  
yea

i) L. Thais §  
Lucius de fi-  
deicommiss.

k) L. quidem  
C. de decuri.

l) Plat. in  
Gorg. Aristo.  
lib. I. polit. c.  
vlt.

m) Cicer. lib.  
3. de orat.

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yea euen these which taught boyes their Alphabet, or first letters were so rewarded <sup>a</sup>: *Vasparian* graunted and allowed to Rhetoricians great franchises, and priuiledges, ° which made Rhetoricke to flourish in that common weale in these times: <sup>n) l. 6. de exe. tut. l. vlt. in fi. de mu. et ho. l. 2. p. vlt. de vac. mu.</sup>

<sup>p</sup> For as *Tacitus* saith well, *Sublaris studiorum pre-rijs, etiam studia peritura, vt minus decora*: and before him *Plato* affirmed it: *Artes illuc confluunt, vbi ipsarum premium est* <sup>q</sup>. And how much it flourished in other common weales may appeare in that *Demosthenes*, *Aristotle*, *Demetrius Phalereus*, eloquent and wise men were credited with the honor of embassage, and such haue beene in all ages well esteemed, vnlesse it were that they haue miscaried at the hands of some couetous churles, and pennie-fathers, or vainglorious pictures of mankind, which as they measure a mans strength by his stature, so they way his inward abilitie by the outward apparell of his bodie, whose childish humour *Iuuenall* gibingly toucheth. •

*didicir iam diues auarus*

*Tantum admirari, tantum laudare disertos*

*Vt pueri Iunonis auem.*

This is to esteeme a booke by the couer, a horse by the his trappings and caparison, and a Greyhound by the collar: *O quantum est in rebus inane!* When will worldlings iudge vprightly of things! neuer: for the blind cannot iudge of colours, °: and *M. Brutus* was wont to call such gawdie, & garish fellows, which were rather fine by the tailors needle,

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• die, then the vniuersitie learning, *aureas pecudes*.  
 Hauing particularly and seuerally spoken, and  
 as it were by way of anatomie, of the diuers call-  
 ings, estates, and degrees of men, it is good to  
 marshall the callings and degrees in order as well  
 as I can conceiue them. In the first place must bee  
 • reposed the person of the king, who as the image  
 • of God agreeth with euerie man, as the lieute-  
 • nant of God with the magistrate, as the annoin-  
 • ted of God to rule & gouerne with neither of the  
 • former, but with God onley, whose paterne he is:  
 after the king if we wil discourse according to rea-  
 son & ancient example the chiefeest of the clergy are  
 to be ranged: for as *Iosephus* noteth, the Hebrews  
 had but 2. sorts of nobility the one sort of the stock  
 of kings who did successiuelly reigne: the other of  
 • the linage of *Aarō* which only were made priests:  
 • for that people reposing all their good in religion  
 • and the worship of God, did accompt such holy  
 • men to be very noble: therfore whensoever God  
 did threaten the destruction, & ouerthrow of that  
 • people he doth threaten them thus, that the state  
 • of the priest and vulgar sort of men shalbe alike<sup>r</sup>;  
 and they which in ancient time did inhabite the  
 • *Cellicke* or Northwest part of *France* did preferre  
 • their *Druids*, who had charge of their sacrifices  
 • and iudgements, before all sorts of people of the  
 knights, and of the nobilitie: So the Turkes and  
 Arabians haue appointed certaine great men cal-  
 led *Mophra* to be their high priests, whom they do  
 greatly

De Es. 24.  
 Ose. 4.

e) Cælib. 6.  
 de bel. ciu.  
 Plut. in Anton.

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greatly reuerence and the summe of all weightie ecclesiastical matters they referre vnto them. The next place should be possessed of Dukes, Marquises, Earles, Vicounts, Barons, &c.

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*That in the law of tributes, subsidies, and prerogatives royal, all Nations haue consented.*



A
 S it behoueth euerie Monarch to haue a watchfull care of his subiects good, and to bend the force of his minde to the preservation and maintenance of their safetie and good estate: so subiects should not grudge to pay vnto them tributes & subsidies, and other publike impositions, that all necessarie charges may bee substantially defraied, al conuenient designs produced into acte, and solemnely exploited. Princes therefore must haue great care of the furnishing of their treasure; for who is ignorant that money is the strength and sinew of a state, howsoeuer Machiawell<sup>a</sup> paradoxically would inferre the contrarie, a man very vnfit to defend paradoxes: by it the bounds of the Monarchie are garded, the pore are relieued, they that haue deserued well are rewarded, the publike and necessarie businesse of the common-weale is dispatched, and therefore that countrie prouerbe<sup>\*</sup> may verie well bee admitted into the princes eare, *Money without stocke is frayle and brittle*: And if warre bee to be

<sup>a</sup>) Machiaw. in lib. obseru. in Liti.

<sup>\*</sup> Pecunia sine peculio fragilis.

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bee vnder taken or maintained, how can this bee done without mony, sithence soldiers are neuer kept in order without salarie, and reward payed and distributed vnto them. *Consilium principum fuit* (saith Pollio) *ut milites, quo solent placari genere, sedarentur: promissis itaque per Martianum aureis vicenis, & acceptis &c.* <sup>b</sup> Philip king of Macedonia was wont to say, that there was no sconce, tower, or forcelet so strong, into which an Asse lodened with money might not enter, and it hath beene noted of Phillip late king of Spaine, that he effected more by his Indian gold, then his Spanish yron. Therefore Horace saith:

b) Tr. eb. Pollio  
in Gallicen.

*Aurum per medios ire satellites  
Et perrumpere amat saxa, potentius  
Ictu fulmineo c.*

c) Horat. 3.  
Carmi. od. 16.

Therefore it is good for a prince in time of peace to prouide for the maintenance of warre: for that which is said of a citie or common weale may bee applyed to a prince or Monarch:

——— *felix*

*Tempore qui pacis bella futura timer.*

And how can prouision bee made for an armie without mony, & how can an army fight without prouision: for as *Cassiodorus* saith: *Disciplinam non potest seruare ieiunus exercitus, dum quod deest semper prassumat armatus, necessitas moderamen non diligit*: one of the ordinarie meanes vsed in all kingdomes for the dispatch and accomplishment of publike affayres hath from all antiquitie beene tribute,

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tribute payed by the subiectes to their prince, a thing as ancient, so necessarie : and *Tacitus* wisely collecteth the conueniencie of it : *neque quies gentium sine armis, neque arma sine stipendijs : neque stipendia sine tributis haberi possunt*<sup>d</sup> : The Romanes did maintaine their warres by tribute; for after *Pompeies* victory which hee had against *Mithridates*, they had out of *Asia maior* six millions and a halfe, out of the lesser *Asia* onely two millions, which none will maruell at, that knoweth *Asia* to bee a fertill and fruitfull countrie, greatly replenished with the varietie of the fruites of the earth, with the largeness of pasture, and the ranknesse of the soyle, and the multitude of such thinges as are transported into other countries for sale : but the tribute of other prouinces was so slender, that it scarcely sufficed for the defence and protection of them \*. And all *France* did not yeelde the thirde parte of that tribute vnto the Romanes, which some part of *Fraunce* did afterward pay vnto their kings, as *Alciar* hath obserued<sup>f</sup> : neyther am I of the minde of *Phillip Commineus*, who denieth generally that princes may command tributes<sup>ff</sup> : for I make no doubt but a conqueror may commaund tribute, and all that come in vnder the conquerour by the law of nations : and therefore the *Romane* generall saith vnto the French men : *Iure victoria tributum vobis addidimus* : And *Iustinian* doth commaund, that tributes may be imposed vpon the *Zani* be-

d) Tacit. lib. 5. annal.

e) Cicer. pro leg. Manil.

f) Alci. l. 27. de V.S.

ff) Philip. Commi. comment.

g) Tacit. 4. histor.

T

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## The tenth Chapter.

ing conquered *ut victos se agnoscerent*: and the Jewes though they had beene clearly conquered (for their citie was sacked, their temple possessed, their *Sanctum sanctorum* looked into: for as *Florus* saith: *Impia gentis arcanum illud vidit sub aureo uri calo<sup>h</sup>*: ) yet craftily after their manner, because they would haue Christ to haue challenged their earthly kingdome, by that mean to draw him into hatred with *Cesar*, they demaunded of him whether it were lawful to giue tribute to *Cesar*: but he that alway professed, *Regnum meum non est ex hoc mundo*, gaue them a bone to gnawe, *Date quod est Cesaris Cesari, and quod Dei Deo<sup>i</sup>*: for in deed tributes are allowed by the law of God<sup>k</sup>: & therefore *Cicero* saith excellently, that tribute is *victoria pramium, pæna belli<sup>l</sup>*: And *Orosius* almost as excellently, that it is *vinculum pacis, monumentum belli<sup>m</sup>*. And though the Spaniards, Germanes and English, doe seeme rather to offer a tribute to their Monarch then the Monarch to commaund it, (for the curtesie of *England* is great, the clemencie of their princes greater) yet for *England* thus much I dare speake, & vnder the rule of modestie protest, that sithence the vniuersal conquest of *William*, who first commanded and imposed tribute vpon this land (for conquerours may commaund) tribute and subsidie haue beene as iustly both by the law of God, and the law of nations, payed in *England* as in *Iewrie*, yea and iustly continued as a remembrance of a conquest: wherefore

h) Flor. lib. 3.  
histor.

d) Mat. 22.

k) Deut. 20.

l) Cicero in  
verr. 5.

m) Oros. lib. 5.  
c. 1.

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fore it is diuinely said of that great diuine *Tertullian*: *Agri tributo onusti, hominum capita stipendio censa, nota sunt captiuitatis*: Lands charged with tribute, polles with taxe, are signes of conquest<sup>n</sup>. *Bodin* in my mind giueth good counsell to princes to set a great impost vpon such thinges as corrupt the manners of their subiectes, as namely vpon these compounded perfumes, these paintings of the face, these Margarites, these Marchpanes, Wines, ° and Tobacco: but vainely and contradictorily to himselfe doth *Bodin* say, that *Hac principi prohibenda non sunt, nec si velit possit*, prouing it out of the fifth booke of *Plato* because such is the nature of men, that these things *qua sanctissime verantur, auidius expetant*; By this reason there could bee no fault, nor default forbidden: as for *Bodin* I excuse him thus: *Nullum fuit magnum ingenium sine mixtura dementia*, which *Seneca* obserueth<sup>oo</sup>: And as to *Platoes* authoritie this is but *errare cum Platone*, *Plato* did erre with *Plato*. Sometime hee did erre, as in the discourse of *intemperate banquets*, in the brutish lust & inward itch of *Alcibiades*, in his fond & vnclean fables: & of *Athenaus* hee is more sharply noted to bee *inuidissimus, rabiose maledicentissimus, mendacissimus, improbissimus, ridicule ambitiosissimus*:<sup>p</sup> & by his darke & amphibologicall writing, he is said to be the cause of the death of that thrise-worthy Romane *M. Caro*,<sup>p</sup> whose death at *Vrica* gaue him his dismall name,

n) *Tertull.* in Apolog.

o) *Bodin.* lib. 6. de rep. c. 2.

oo) *Senec.* in fin. lib. de ira.

p) lib. 4. 5. 11.

q) *Plur.* in Cat.

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and *Solons* lawes though hee were his ancestor, a great deale wiser, and farre more imployed in matters of estate, could not content him but hee must haue visioned lawes, such as were neuer vsed sithence his time, and therefore as it is likely, neuer shall be vsed: *For what is it that hath beene, that shall bee, and what is it that hath beene done, that which shall bee done: And there is no new thing vnder the sunne,*<sup>r</sup> and that that shalbe hath now beene<sup>rr</sup>.

r) Eccleas. c. 1.

rr) Eccles. c. 3.

But to come to my purpose again, and to another prerogatiue of princes.

Princes likewise maintayne their realmes and their estate royall by importing and bringing in such things, as be of value or price. Wherefore *Linie* noteth of *Carnileus Consul*<sup>r</sup>, that all the brasse and all the siluer he brought into the treasure: and he saith of *Fuluius*, that hee brought out of *Spaine* into the treasure an hundred fortie two thousand pound of siluer: and an hundred twentie seuen thousand pound of gold: and of *Camillus*<sup>r</sup>, that when hee had overcome the French nation beyond the Alpes, hee brought in a hundred threescore and tenne thousande pounce of siluer, and of brasse three hundred twentie thousand: and of *Flaminius*<sup>u</sup> that he brought out of *Greece* eighteene thousande pounce of siluer in bullion, and two hundred and seuentie thousand of plate, fourescore and foure

f) *Linii*. lib. 9.

e) *Linii*. li. 3.

u) *Linii*. lib. 34.

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four thousand shillings, and three thousand seven hundredde and fourteene poundes of golde: a buckler of golde entier. Of *Phillippes* money a hundred fortie and fivie thousande pounde, and an hundred fourteene pounde of golden crownes, which the cities bestowed on him. And *Paulus Æmilius*<sup>uu</sup> that president of<sup>uu</sup> *Liui.lib.*  
a capitaine, when he had surpised *Macedonia*,<sup>45.</sup>  
brought into the tresurie a thousand and two hundred sestertians. And *Cæsar* hauing ouercome *Fraunce*, four thousand sestertians. *Fabius Maximus*<sup>x</sup> brought in fourescore and three thousand<sup>x</sup> *Liui.lib.27.*  
pound of golde, beside great quantitie of siluer. And *Scipio* commonlie called *Asiaticus*<sup>y</sup> did bring<sup>y</sup> *Liui.lib.36.*  
in after his victorie had against *Antiochus*, two<sup>38.39.</sup>  
hundred thirtie and three poundes in golden crownes, two hundred fortie and seauen thousand poundes of siluer, of *Phillippes* rials a hundred fortie thousand, and a thousand and twentie four poundes of gold. Who can number that which *Caro* brought from *Cyprus*<sup>a</sup>: that which<sup>a</sup> *Flor.lib.3.*  
*Pompeie*<sup>b</sup> brought from the Easterne & Southern<sup>b</sup> *Lucan.lib.*  
warres: These by doing thus did make that com-<sup>3.</sup>  
mon wealth great: others by doing the like may make others like. And *Alexander* the great did replenish all *Greece* with siluer, when hee had atchiued the victorie of *Darius* and the *Persians*:  
*Looke upon my whole armie* (said he) *they which before had nothing but coates of Steele, do now lye in siluer beds*<sup>c</sup>. And much did *Anniball* enrich the *Car-*<sup>c</sup> *Curti.lib.8.*

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*thaginian* treasure, when after his victory at *Canna* he sent into the Senate of *Carthage*<sup>d</sup>, three strike of golden rings, and so compassed them by measure, though by number he could not<sup>e</sup>. And in the holie Scripture it is reported of king *Salomon*: That the weight of gold, which was brought unto him from foreine countries yearly, did amount to the value of sixe hundred, sixtie and sixe talents of gold, beside that which his collectors leuied upon his subiectes, and tributaries, and the custome which he had of merchants, together with the tribute of the Kinges of *Arabia*, and the Lieutenants and Generours of nations anywaie subiect or subordinate unto him<sup>f</sup>.

d) Liui. lib. 23.  
e) D. Augusti. lib. 3. de ciuit. dei c. 19.  
f) 2. Chronic. cap. 3. 3. Reg. cap. 10.

Custome likewise is a prerogatiue and benefit to which Kinges and Princes are by the Law of nations entituled: It was of the auncient *Italians* called *Portorium*, because it was to be taken of thinges that were to be caried out, and to be brought in<sup>g</sup>. The *Turkish* Emperour taketh the tenth part of the value of the thinges that are to be caried out of straungers, and the twentieth part of his subiectes<sup>h</sup>. And the king of *Spaine* taketh in *India* the tenth part *promiscue*, as well of straungers as his subiectes<sup>i</sup>. And by the Law of *England*, Merchants strangers being made denizens, shall paie custome as straungers that be not denizens<sup>k</sup>.

g) Cicer. in oration. pro leg. Manil.

h) Bodin. lib. 6. de rep. c. 2.

i) The booke entituled (The present state of Spaine.

k) 11. H. 7. ca. 14.

It is good for euerie Prince to haue speciall care and regarde of mainteining merchandize, because

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cause by that meane, not onelie things profitable are brought into a kingdome, but manie things are caried out to be sold, and exchanged for publike good: and manie sodain chaunces do arise, wherein no small daungers are put aside by their meanes. *Plutarch* reporteth, that in *Solons* time merchandizing was held in great price, and he giueth this reason for it, because by that meane diuers foreine commodities were brought in, friendship was procured with straunge kinges, experience in manie things was attained<sup>l</sup>. And the vse of merchandizing beeing once taken awaie in the kingdome of *Naples*, was the cause that all the prouinciall people was presentlie brought to pouertie<sup>m</sup>. And for the alluring of straunge Merchants into a Realme, their priuiledges must be inuiolablie obserued, especiallie at the times when they hold their martes, or fayres, that they may safelie goe, returne, tarie, and staie with their wares, which diuers of our Statutes of England haue provided for, *Magna Chart. cap. 28. 9. E. 3. cap. 1. et 2. 14. E. 3. cap. 1. 25. E. 3. cap. 4. 27. E. 3. cap. 2.* Of this matter Kings and Princes should haue good regarde: for *Platoes* admonition is to be followed, when hee saith, *Peregrinorum commercia respub. ne auersetur*<sup>n</sup>. And *Amásis* the Egyptian king was so glad of straungers resort and their commerce, that he graunted to the Græcian merchants meere straungers, the vse and exercise of

<sup>l</sup>) *Plut. in Solon.*

<sup>m</sup>) *Pont. c. 45. de liberalit.*

<sup>n</sup>) *Plat. lib. 11. de legib.*

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of their rites and religion in their owne language, and for their more expedite negotiation in that Realme, there was a certaine place appointed, namelie *Naucrase* for the receit of foreine wares °.

o) Herodot.  
lib. 2.

And *Aristotle* is of opinion, that a principall citie must be erected in some conuenient place wher-to thinges which be necessarie to this life may be abundantly conueyed, and this he would haue situate neere to the sea <sup>p</sup>. And the people of *Megara* did iustlie complaine against the *Athenians*,

p) Arist. 5. polit. c. 7. et 6. politic. c. 7.

who had vtterlie seclused them from their Hauens, and from marting with them <sup>q</sup>. This therefore must needes be a good meane to encrease the riches of a kingdome. But it is the Princes prerogatiue to permit and to forbid merchant straungers at their pleasure and discretion: and therefore the Statute of *Magna charta* hath in it a good clause

q) Plut. in Pericli.

for this purpose: *Omnes Mercatores, nisi ante prohiberi fuerint, habeant saluum conductum exire, & venire in Angliam &c* <sup>r</sup>. otherwise some Merchants may sowe bad seede, euen the seede of seducement of the Princes lieges, shrowding themselves vnder the curtaine of exposing wares to sale: But these which are honest Merchants, and of iust meaning are not to be forbidden.

r) Magn. char. cap. 28.

Other benefites, and prerogatiues there be, which the Law of Nations doth allow to Princes in regarde of their exceeding costes and charge that they are at in the defending; and gouerning their Realmes: For though I haue shewed before,

that

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that a masse of wealth almost infinite was brought into the Romane treasurie: yet he that considereth their great expence, and exceeding charge, will, I am sure, confesse, that this great wealth had neede to haue been verie well husbanded for the mannaging of their ordinarie affaires, otherwise it would neuer haue stretched to the defrayment of their charges. Their forces did consist of two hundred thousand foote-men, of fortie thousand horse-men, three thousand warlike chariots, two thousand shippes, a thousand five hundred pinnasses, fourescore gallies, double furniture of armourie, and three hundred Elephants, and in their shippes were a hundred thousand souldiers, and mariners<sup>rr</sup>: So that *Cicero* saith plainlie, that the *Romanes*, notwithstanding all their great reuenue and treasure, were scarce able to mainteine their armie<sup>r</sup>. In consideration of which great and extreame charges, the subiects of all Nations haue giuen and yeelded to their princes, diuers princelie and roiall benefites and prerogatiues for the magnifying of their estate: As first the vse and benefit of salt Mines, (for as the Italian prouerbe is: *Vino, oleo, è sale suono mercantia reale: Wine, oile, and salt, are the merchandize roiall.*) And the *Veientes* in auncient time being ouercome of *Romulus*, were straitlie forbidden to abstaine from the salt Mines, which were about the mouth of the riuer<sup>r</sup>. And these salt Mines were brought into better forme, and were made more commodious

<sup>rr</sup>) *Lipsi. de magistr. Rom. lib. 1. c. 4. 5.*

<sup>r</sup>) *Cicer. parad. 6.*

<sup>r</sup>) *Dionys. Halycar. lib.*

VOD 2015 lib. 2. c. 4. 5.

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for the common weale vnder the reigne of *An-*  
cus<sup>u</sup>. And *Aurelius victor* doth note, that at the self  
 same time an impost was made, and ordeined for  
 the same<sup>uu</sup>. And an other impost was made when  
*Linie* was Cenfor, who of this word Salt, had the  
 name of *Salinator* giuen him<sup>a</sup>. And *Paulus Æmi-*  
*lius* hauing subdued the *Macedonians* did reserue  
 the prerogatiue of salt vnto the *Romanes*, and did  
 forbid the *Macedonians* to vse any salt, that perhaps  
 they might finde out, without the permission of  
 the Senate. Yet the commerce of Salt he did af-  
 ford to the *Dardaniens* or *Troians*, the auncient  
 progenitors of the *Romanes*<sup>b</sup>. And the Publicanes  
 had Salt in farme, as may appeare by *Ciceroes* re-  
 port, and other authorities<sup>c</sup>. A princelie thing  
 doubtles it is, and for it there hath been great con-  
 tention betwixt great estates: as namelie betwixt  
 the *Burgundians*, and the *Almannes*, betwixt the  
*Hermunduri*, and the *Catti*, together with that of  
*Perusia* vnder *Paulus the third*, and that of Fraunce  
 vnder *Frauncis the first*, and diuers others daunge-  
 rous quarrels haue been about pretended titles to  
 Salt<sup>d</sup>. Neither is it to be meruailed that Princes  
 make so great accompt of it: for *Homer* accompted  
 it diuine, if it be true which *Plutarch* reporteth of  
 him<sup>e</sup>. But what shall we saie now of the other en-  
 tralles of the earth: as Pitch, Chalke, lyme, quarrie  
 stone, brimstone, and the like: As for gold and sil-  
 uer I make no question, but by the Law of nations  
 they belong to the Prince. I would aske this que-  
 stion, Sithence God hath treasured in the mines  
 gold

u) Liui. lib. 1.

uu) Victo. lib.  
de vir. illustr.

a) Liui. lib. 29.

b) Liui. lib. 45.

c) Cicer. pro  
le. Ma. l. fed et  
hi. D. de pub-  
lica. l. 5. C. pro  
fo. l. si quis C.  
de vect. et  
com.

d) Ammian.  
lib. 28. Tacit.  
lib. 13.

Guicciar. lib.  
12. 14. 16. 18.  
19.

e) Plut. in  
symp. 59. 8.

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gold & siluer, & other mettals: for whom hath he treasured them? if all the Mines of gold & siluer should be in the lands of one subiect: is it lawfull for him to coine money of this siluer & gold? no verilie, as may appeare by that question of our Lord and Sauior, when he asked whose stampe or impression the money did beare<sup>e</sup>, what shall he then do with it? shall he make plate of it: by this mean a subiect shall haue plate, & the king none, which is not conueniēt: Therefore I take the iudgment giuen in the case betwixt the Q. Maiestie & the Earle of Northumberland, touching the title of these roiall Mines to be found and grounded vpon inuincible reason: howbeit the graunt was *omnium et singularum Minerarum*: for the diuersitie is there by *Wray* well taken, that there be two sorts of Mines, mines roiall, & base mines; Now mines roiall may be subdiuided into two other kinds, those which contain in them siluer or gold entierlie: or which haue brasse or copper in them, and haue some vaines of gold intermixed, both these belong to the Prince: for the gold as *magis dignum astrahit ad se minus dignū*: But such as haue in them meerly brasse, iron, copper, or lead, may belong vnto a subiect by special title<sup>f</sup>, notwithstanding *Dio* a wise & iudicial writer maketh all Mines of mettall in general publike, as belonging to the Prince or common weal<sup>g</sup>. And mines of Pitch *Cicero* alloteth to the Prince by the like cēsure<sup>h</sup>. And doubtles there is great reason for their opinion, because it should seeme that these mettalles were

e) Matt. 22.  
ver. 20.

f) 10. Eliz.  
Cōm 3: 10: In-  
formac. pur  
Mines.

g) *Dio lib. 52.*  
h) *Cicer. in*  
*Biut.*

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3) Nou. 85.

k) Suetoni. in  
Tiber. c. 49.

l) Molin ad  
Dec. conf.  
292.

*Inq. lib.  
Harc. 2.  
Saty. fo. 14.*

created of God, not for a priuate, but a publike vse at the first: for iron and Steele do principallie serue for armour, and there is a rule in the Ciuill Law, *De armis publice asseruandis*<sup>i</sup>. Pitch is principallie ordeined for the glewing together of the bordes of shippes, and shippes were principallie ordeined for the common weale. Copper and Brasse haue in all ages and common weales been companions of the aforefaid Mettals, and haue been vsed with them, and passed with them as the shaddow with the bodie. Yet if a Prince haue transmitted his title or right vnto the base Mines to anie of his subiectes, I think he cannot by roiall claime wrest them out of his handes. And this *Suetonius* reckoneth as one of the concussions of *Tiberius*, who tooke from cities and priuate men the Mettals in which they were lawfullie interested<sup>k</sup>. And *Laurentius Medices* hath been touched likewise for the same fault<sup>l</sup>, that the landes and goods of Traitors and Felons doe by the Law of Nations belong to the king or Monarche hath been afore cleerlie prooued in the second Chapter of this Treatise. But what shall we saie of Treasure found in the earth will not the Law of Nations assigne it to the Prince? Yes verilie, notwithstanding *Plato* his straunge conceit, that they should be *immobiles*, and *Dijs inferis sacri*: for should there be no vse of so pretious thing, and one of the most gorgeous creatures of God. It is an argument of a froward & a brutish humour to make

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make vse of quarrie-stone & not pretious stone, of coal, and not of gold. The *Romanes* were as superstitious as *Plato*, but a great deale wiser, for they dedicated a temple to *Pecunia* that they might be *pecuniosi*, stored with money <sup>m</sup>. Wherefore *In-nenall* by his leaue was deceiued, when he writ:

<sup>m</sup>) D. Augstin.  
lib. 4. de ciuit.  
dei. c. 21.

— *et si funesta pecunia templo,*

*Nondum habitas, nullas nummorum ereximus aras* <sup>n</sup>.

<sup>n</sup>) Iuuen.  
Satyr. 1.

But it is no meruaile if this poet were ignorant that it was idolized: for *Varro* writeth, that to many of the learned their gods, their sacrifices and ceremonies were hidden and vnknowne, but *M. Stramfords* reason wherefore treasure should belong to the king is vnanswerable, and it is this *quia dominus rei non apparet, ideo cuius sit incertum est* <sup>o</sup>: and it is a currant rule in all nations, *In ambiguis casibus semper præsумitur pro rege*. *Adrianus Caesar* made a lawe as *Spartianus* reporteth, that if any man had found treasure in his owne ground himselfe should haue it: if in an other mans hee shall giue the half to the owner of the soile: if in a publicke place he shall diuide it equally with the treasure. This law was abrogated by other lawes following, and reuiued by *Iustinian*, but now and long time agoe the ciuill law hath transferred it to the prince in whose realme it is found <sup>p</sup>: and it is a firme conclusion in the common law: *Quod thesaurus competit domino regi, & non domino libertatis, nisi sit per verba specialia* <sup>q</sup>.

<sup>o</sup>) 22. Aff.  
pl. 99.

<sup>p</sup>) l. 3. §. Nera-  
ti. D. de acqui.  
possef.

<sup>q</sup>) Fitzh.  
Coro. 281. 436.

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*That all Nations haue both secretly and by the course of their ouert actions, acknowledged and yeelded to the truth of the lawes and commandements of the 2. table of the decalogue.*



Ow far the light of nature stretcheth, may appeare by the liues of vertuous heathen men, who knowing that the fixe last precepts, which almighty God prescribed to his people were to bee obserued and kept, yet wanted grace to refer them vnto God, who ought to bee the marke of all our actions, and in regard of whom only they may be tearmed good: & *M. D. Barlow* in his deep & learned discourse against the shallow-headed Papist reasoneth soundly and prooueth by the Apostles words, *quidquid nō est ex fide est peccatū*, & by other vndeniable proofes that such works could not be acceptable to God, because howsoeuer they proceeded from God, yet they were not referred to the glorie of God: for though God moued them to doe well, and some of them confessed: *Est deus in nobis agitare cālescimus illo*: yet before the end he left them, because vainglory was their end, and so

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so they did their suite at a wrong court. But now let vs particularly examine the obseruation as wel of the gentiles and Christians of these commaundements and ordinaunces. The obedience that children ought to giue to their parents hath bene straitly commaunded by God and seuerely enioyned by Emperours <sup>a</sup>: and *Homer* diuinely according vnto the wordes of this precept doeth threaten that the life of disobedient children shall not be long <sup>b</sup>: & *Plato* hath an excellent speech to this purpose: *He which mainteineth his parents while they are old in his house let him thinke that his house shalbe neuer be possessed of the like ornament* <sup>c</sup>: therefore it hath bene ordeined of God, that children which were disobedient to their parents, should be punished of the magistrate <sup>d</sup>, & his iudgement is thus set downe: *If any man haue begotten a stubborne and froward child which will not obey his father & mother, & being corrected continueth still in disobedience, let the bring him to the elders of the citie, and to the iudgement gate, and the father shall say to the people: this our sonne is stubborne and despiseth our admonitions, and giueth himselfe to riot and incontinencie, then the people shall stone him, and he shall dye: that the euill may bee taken from the midst of you*: Yea euen they which had only curst their parents were adiudged to death <sup>e</sup>: In former time hee that had slain his father or mother grandfather or grandmother, was first bet with rods vntil the blud trickled downe, & then being thrust into a sacke toge-

- a) Exod. 20.  
v. 12. Deut. 5.  
v. 16. Acto. 4.  
19. Pompon.  
l. 2. ff. de iust.  
et iur. p. ius Im-  
perat. l. 1. C.  
de alen. lib.
- b) Homer. in  
Iliad.
- c) Plat. lib. 11.  
de legi.
- d) Deuter. 21. v  
18.

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together with a dogge, a cocke, and a snake, hee was throwne into the bottome of the sea, and by *Pompeis* law it was prouided, that if the sea bee not neare, he should be throwne out to deuouring beasts. At Rome this fact was not heard of, till *L. Ostius* did slay his father, which happened after *Hannibals* warre: And *Plaso* his law is, that if a man in his furie or madnes do kill his father or mother, and they before their death do pardon him the fault, yet he is to be adiudged guilty of slaughter, of impietic, of sacriledge<sup>f</sup>. But what shall wee say of *Orestes*, who did slay his mother because she did slay his father: though there bee diuers opinions which do acquite *Orestes*, as namely the opinions of *Cicero*<sup>g</sup>, *Patereulus*<sup>h</sup>, and *Quintilian*<sup>i</sup>: yet against them are *Socrates*<sup>k</sup>, *Diodorus*<sup>l</sup>, & *Aristotle*<sup>m</sup>, but why should we depend vpon the iudgement of man in this case, when it is manifest that the iudgement of God was in the highest degree, if we respect the paines of this life onely, executed vpon *Orestes*: for he was plagued with madnesse a terrible signe of the reuenging wrath of God.

And murder hath beene so much detested that, a beast which had slaine a man was commanded to bee stoned, and that his flesh should not bee eaten<sup>n</sup> and by the ciuill law if a man be bitten of an other mans dog, the owner of the dog is chargeable vnto him that is hurt, because hee did not tie vp his dogge or muffle him: therefore *Solon* deuised a pretie punishment of such wronges, namely

e) Plut. in Rom. l. 1. Et l. p. 2. ff. ad l. Pomp. de par. ricid. Cicer in oration. pro Rosc. Amerin. et in orator.

f) Pl. lib. 1. de legi.

g) Cicer. in Milon.

h) Patere. lib. 1.

i) Quintil. lib. 5. c. 11.

k) Plut. in 2. Alcibiad.

l) Diodor. l. 5.

m) Aristot. l. 2. Rhetoric. c. 5.

n) Exod. 21. v. 28.

o) l. 1. §. sed et si canis. ff. si quadrup. pauper fecer.

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namely that the dogge who had by byting hurt any man should haue a clogge of foure foote tyed to his necke, and so should be yeelded vp into the hands of him whom he had hurt, which *Plutarch* calleth *bellum commentum ad securitatem* <sup>p) Plut. in Solon.</sup> *P.* They which had killed a man in *Greece* did vsually flie to forreigne princes, and there if hee who was slaine was a stranger, they vsed to sitte at the threshold of the dore with his head couered with the sword wherewith he was slaine: if hee were one of the same countrie, the sword was brokē in two, and the point of the sword was helde vnder one arme, the hilt vnder the other <sup>q) Sophocl.</sup> *a*: a lamentable sight no doubt, but done to this purpose, that they which had slaine the men might by these forraine princes haue expiatiō of their fault, which expiation was fully as bad or rather worse thē the murder; for the princes who were to expiate thē, did by inchantments inuocate and make suite to the wicked spirites, that they may absolue them from the fault which is done by sprinkling them seauen times with water, the predecessor of the Popes holiwater, and to this feate seauen garments were therewith sprinckled, then they kill a swine, a fitte sacrifice for the deuill: then they call vpon *Iupiter Hospitall*, praying him that he wold not vexe with furie the party that had offended: thus the absolution is worse then the offence, and like to that of the merry Monke: *Absoluo te ab omnibus benefactis tuis, & peiorem te relinquo quāū accepi* <sup>r) Erasim. in colloqu.</sup> *r.* Then there

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there are boughes spread along the houses, that the deuill might tread soft. Some of them washed themselues in the sea, till they had almost drowned themselues : murder is the forerunner of death : and that foolish solemnitie *Catullus* glaunceth at :

*Nec genitor Nimpharum abluat Oceanus,*  
Likewise *Ouid* :

*Ah nimium faciles qui tristia crimina cadis*  
*Fulminea tolli posse putas aqua.*

after this manner *Adrastus* fled from *Thebes* to *Tydeus* : *Peleus* fled to *Patroclus*, when hee being but a boy had slaine *Clesonynus* a boy likewise : & *Paris* though he had stolne away *Helena* the wife of *Menelaus*, yet when hee had slaine *Antheus Antenor*s sonne, whom he loued, he fled to *Menelaus* (a great iudgement of God) his very enemy for expiation, like to that iudgement of the almighty executed vpon *Cosby* an Irish-man, who when he had slaine the towardly Captain the Lord *Burgh*, fought by-pathes, and had thought to haue fled from the slaine body, as farre as the Sunne is from the Moon, but the Lord put a ring into his snowt, and brought him backe againe, almost as neere to the murdered Lord as the grasse is to the earth : a fit admonition for these times wherein *homo sacrares per iocum occiditur* : In *Egipt* and *Babilon* he which had slaine a man did penance by doing pilgrimage on the mountaines, and then sacrificing vpon the tombe of the dead, and so being cleansed

f) Senec. lib.  
de ir.

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fed of the *Gymnosophistes*. The Persians vnder the reigne of *Semiramis* did shauē the head of him that had slaine an other and confiscated his goodes: and caused him to go vpon burning coales or firebrandes, and then sprinkled him with water, the patterne of the Popes purgatorie<sup>t</sup>: The Iewes did vsually kill such by sword or by rope<sup>u</sup>: according to the commaundement of God. *Qui effuderit sanguinem hominis in homine, sanguis eius effundetur, quia ad imaginē Dei fecit hominem*<sup>x</sup>. How murder hath beene punished by the ciuill law, the canon law, and the common law of this realme, I haue shewed I hope sufficiently in my Parallele of the lawes, so that I shall not need here to rowle the same stone.

After the hurt of a mans owne bodie, nothing can happen to him worse then the abusing of the bodie of his wife: for (as *Salomon* saith) ieaousie is the rage of a man, therefore he will not spare in the day of vengeance<sup>a</sup>. This last did first cause the diluge: and after the diluge, the destruction of the people of *Sodom* and *Gomorrah* voluptuously mingling themselues with the women of the Moabites, where there were twentie and foure thousand slaine<sup>b</sup>: For the vncleannesse of the Gabeonites with the Leuites wife, the whole tribe of *Beniamin* was destroyed<sup>c</sup>: By the law of *Moses* if any had committed adulterie with another mans wife, the adulterer, and the adulteresse were both condemned to death<sup>d</sup>: & so was adul-

r) Sard. Ferrar.  
de mor. gent.  
u) Card. Sigoni.  
in lib. de  
rep. Hebr.

x) Genes 9.  
v. 6. Matt. 26.  
v. 52.

a) Proverb. 6.  
v. 34.

b) Num. 35.  
v. 9.

c) Iud. 20.

d) Leuit. 20.  
v. 10.

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rie punished by the Romane lawe called the law *Julia* howsoever it slept in *Iuuenall* his time, one that had beene wanton himselfe : *Vbi nunc lex Iulia? dormis?* yet after this law was recalled by the Emperour *Alex* : <sup>e</sup> therefore *Constantine* did punish sacrilegious destroyers of marriage by the sword<sup>f</sup> : therefore the Popes stewes are to be abandoned, by whose contagion all *Europe* hath offended: Let his holines & his fulminant foolish deity as well in all other respects as in this, bee measured by the law of God, and it will appeare to bee abomination by the law of nations and desolation by the law of God, which all nations owe vnto him.

God hath said. *Non erit meretrix in Israel, nec scorator* <sup>g</sup>. By the imperial law it is forbidden, that no bawdrie should be exercised, or any stewes suffered in any place through the whole Romane Empire<sup>h</sup> : *Lactantius* writeth<sup>i</sup> that the deuill consecrateth stewes (as the Pope doth Iesuites and Seminarie priests, the one for spirituall lust and idolatrie, or if that faile, for treason: the other for carnall) that he may solemnely laugh both at the adulterer and the adultresse, and so make a banquet of both, which is signified by the Italian byword. *The woman is the fire, the man is the roastmeate, in commerth the deuill, and he playeth the cooke.*

<sup>k</sup> In *Germany* they vse to cut off the heare of an adultresse, and the husband whippeth her out of his house through the streete<sup>l</sup> : and I haue seene some of them balded here in *Englande* with

e) l. Castil. C.  
ad l. Iul. de adulter.  
f) l. quamuis.  
c.co.

g) Deut. 23.  
v. 17.  
h) Nouell.  
Const. 14.  
i) Lact. lib. 6.  
c. 23.

k) Flor.  
giardin. de  
recreat.  
l) Far. lib. de  
morgent.

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with a white sheete on their shoulders on the market daie : but that custome is now , as far as I can perceiue disused : I could wish that it were continued, that we might know a knaue and a queane by their coloures . And they were wont likewise

- to haue a bell runge before them , which was a custome vsed amongst the *Romanes* , as *Perseus* sheweth , who because it was wont to be runge at nine of the clocke , calleth them therefore *Nona-rius* , a custome discountenanced and broken by *Theodosius* , but for what reason I know not : shall we vse nothing that the Gentiles haue vsed ? *Mahomers* law is too light for this fault : for the adulterer is punished but with an hundred stripes . But in *Egypt* in auncient time he had a thousand , and the nostrils of the adulteresse were slitted . *Solons* punishment likewise was too light , yea , and against reason , who imposed vpon him that rauished a maide , the mulct of ten groates , vpon him that allured a maide to naughtines twentie . But in *Athens* afterward the rauishour was punished with death , if the rauished partie would not marie him <sup>m</sup> .

m) Far. lib. de mer. gent.

In the prohibition of theft , all Nations haue likewise consented . They that steale a sheep out of the flocke , or an ox out of the heerd , are both by the Ciuill and common Law theefes . <sup>n</sup> They which steale Doues out of a douecote , are by the ciuill Law accompted theefes . <sup>o</sup> But by the common Law , felonie cannot be committed by the

n) Vlp. lib. 1. ff. de abig.

o) Instit de rer. diuisi. §. seru. l. 3.

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§. item fer. ff.  
de acquir. rer.  
poss. iustit.  
de rer. diuif.  
§. gallinar. l. si  
pauon. ff. de  
furt.

p) 18. H. 8. 2.  
22. Aff. pl. 95.

q) Stamf. lib.  
1. cap. 16.

r) L. scien. ff.  
arbor. furt.  
c. 6.

s) Deut. 23.  
ver. penult.  
et ult.

taking of beastes that be sauage, if they be sauage and vntamed at the time of the taking: nor for taking of Doues being out of a douecote: nor for taking of fishes being at large in a riuer: for such taking is not *contrectatio rei aliena sed quæ est nullius in bonis*<sup>p</sup>. And the stealing of a Doe which is tame and domesticall is felonie. But as *Mast. Stamford* well noteth, it seemeth that he that stealeth it should haue certaine knowledge that it is tame: but if the Doe be killed, and then stolen, this is certainlie felonie<sup>q</sup>. And he that theeuishlie cutteth a mans vines, by the ciuil Law is punished as a theefe<sup>r</sup>. And by the Law of the twelue Tables, if anie man did cause his beastes to feede vpon, or himselfe did cut and carie awaie Corne growing vpon the ground, if he were of full age he was ordeined to be hanged and to be sacrificed to *Ceres*, if not; he was whipped, and did yeeld either the dammage: or if he were obstinate, the double. Wherein the *Decem-virs* did seeme to haue imitated the seueritie of *Draco*, who did inflict no lesse punishment vpon the stealers of grapes and hearbes, then vpon homicides, and sacrilegious persons: But the *Romans* succeeding altered this, and inflicted no other punishment then that which is aboue mentioned to be imposed vpon him, who is within age: But as the Law of *Moses*<sup>s</sup>, so it seemeth the Law of Nations did permit a trauailer to relieue his hunger, and to taste so manie grapes as his present

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present vse did require, but not to take them awaie with him. But by the common Law, if a man cut Trees, and at the same time carrie them awaie, this is not felonie, but a trespassse: But if they lie vpon the ground a long time as the goods of the owner of the soyle, this is felonie<sup>t</sup>. The *Prators* of Rome did punish a theefe *pæna quadrupli*: and the *Jewes* with the seauen-folde, or if his goodes would not amount to so much, with all the substance of his house<sup>u</sup>. They of *Mysia* do break the legges of theefes<sup>uu</sup>. The *Scythians* do punish petie larceners with whippes: But if a thing of good value be taken awaie, they must render the nine-folde, or els be put to death<sup>a</sup>. Amongest the *Phrygians* he was put to death that stole anie instrument of husbandrie, or did kill an oxe that was fit for the plough: because the liuing of these countrie-people did much consist of husbandrie<sup>b</sup>. As in *Halyfax*, he that stealeth but a yard of cloth is presedly put to death: because the whole liue-lode of the most of them resteth in cloth.

And as to the interdiction of false witness or testimonie, all Nations haue subscribed. The *Grecians* did enforce their witnesses to sweare at the altar. And *Plato* saith, that witnesses were wont to sweare by *Iupiter*, *Apollo*, and *Themis*: signifying<sup>c</sup> by *Themis* that they which did sweare falsely did offend *contra ius diuinum & humanum*: signifying by *Iupiter* that they should not escape the reuenge of the wrath of God: by *Apollo* that their falshood

<sup>t</sup>) 23. E. 3.  
Corone 256.  
10. E. 4. 15.  
Stamf. 25.

<sup>u</sup>) Prouerb. 6.  
verf. 31.  
<sup>uu</sup>) Far. lib. 2.  
c. 26.

<sup>a</sup>) Far. ib.

<sup>b</sup>) id. ibid.

<sup>c</sup>) Cicer. pro  
Flac.

## The eleuenth Chapter.

falshood and periurie could not be concealed:  
 and one witnesse that hath seene a thing done,  
 hath beene more credited then ten that doe onely  
 testifie by heere say. *Pluris est oculus testis unus,*  
*quam auris decem* saith *Plautus*<sup>d</sup>. And to this pur-  
 pose *Horner* did imagine two gates of dreames:  
 one made of iuorie by which false shadowes did  
 passe, the other of horne by which true: By the  
 iuorie he meant the teeth, signifying that by re-  
 port manie fables did growe: by the hornie gates  
 he meant the eyes, shewing that the eye-sight  
 maketh the truest report<sup>e</sup>. *Iustinian* calleth it *ocula-*  
*rum fidem* when the thing is knowne by the eye  
 sight<sup>f</sup>. And he hath diligentlie provided by his  
 Lawes, that innocencie might be safe against  
 sycophants<sup>g</sup>. And it is a diuine saying in the ci-  
 uill Law, *Testimonia, instrumenta non tam ad pra-*  
*stigium probationum, quam e conscientia quam ille*  
*testium loco est fide producenda sumi*<sup>h</sup>. In England it  
 is seuerelie punished by the Statute of *s. Elizab.*  
 and this is according to the Law of God: *Non*  
*iurabis in nomine meo mendaciter, neque polluas*  
*nomen dei tui: ego dominus*<sup>i</sup>: For truth was so  
 much fauoured amongst the Heathen, that the  
 Egyptian Iudges had the image of Truth hanged  
 about their neckes.

And the coueting of the things that belong to  
 an other man is likewise forbidden: of his wife,  
*Qui affexeret uxorem proximi sui ad concupiscendam*  
*eam, iam adulterium perpetravit cum ea in corde suo*<sup>k</sup>.  
And

d) *Plaut. in Trucu.*

e) *Hom. in Illi.*

f) § *vlr. Iust. de grad.*

g) *Nouel. con- stit. 13. et 16.*

h) *L. propriet. l. vlt. C. de probat. l. eos test. C. de testib.*

i) *Leuit. 19. v. 12.*

k) *Matt. 5. ver. 28.*

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. And *Iustinian* his Law is tarte : *Si quis non dicam*  
 . *rapere , sed attentare tantummodo virgines sacras* <sup>l) C. de Epif-</sup>  
 . *auferit , capitali pœna feriatur* <sup>cop. et cler.</sup> <sup>l. si quis non</sup>  
 . *stome* faith well : *Si mulier ornatur ut viros irriset,* <sup>dicam.</sup>  
 . *etiamsi neminem vulneret , tamen adultera est* <sup>11) Chryso-</sup> <sup>in Matth. 1.</sup>  
 some who are glad with fig-leaues to couer their <sup>homil. 17.</sup>  
 faultes , and to purge their blacke iaundise with a  
 glister of inke , doe excuse their sinne by *Dauids*  
 example , hauing committed adulterie with *Ber-*  
*sabe* the wife of *Yria*, and make that their protecti-  
 on, for which *Dauid* craued a pardon : But their  
 foules are therefore more sinfull, because they fol-  
 lowed *Dauid* as he was a sinner : the woman was  
 far off, but temptation was neare, as *S. Augustine*  
 faith <sup>m)</sup>, his owne flesh was his betrayer, and when <sup>August. in</sup>  
 he opened two eyes to behold her beautie, hell <sup>com sup. Plal.</sup>  
 opened two gates to sinne : by the one of which <sup>51.</sup>  
 came adulterie , by the other murther into *Danids*  
 hart. The desire likewise of an other mans landes,  
 or goods hath been euen of the *Paganes* detested :  
*Vicinorum sulcos non transgreditor , neq; interuer-* <sup>n) Iustini. l.</sup>  
*rito*, faith *Iustinian* the Emperour <sup>Georg. tit. i.</sup> <sup>a)</sup>. *Ne transgredi-*  
*aris terminos antiquos* faith *Plato* <sup>o) Plat. lib. 8.</sup> : And therefore <sup>de legib.</sup>  
 as I haue shewed before, *Terminus* was worship-  
 ped of the *Romanes* : for as the Poet faith :

*Omnis erit sine te litigiosus ager.*

And the Law of the twelue Tables was : *Qui ter-*  
*minum exarsit, ipsas et boues sacri sunt.* *Cu. Pom-*  
*peius* is highlie commended of *Plinie* , because  
 he would neuer buy anie mans ground that laie

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i) Heliod. lib. r

k) Alberici

Gentil. lib.

1. de iur. bell.

c. 4.

l) Hotom. 7.

ult. qua. sti.

m) Caesar. lib.

3. de bel. ciuil.

and so haue beene put to death<sup>i</sup>: Therefore some<sup>k</sup> doe woonder that *D. Horoman* dare affirme that the Law of Nations doth extende to fugitiues and robbers<sup>l</sup>: and his first reason is, because there is no Law which doth interdict or forbid to couenant or contract with them: and such thinges as are not verballie forbidden, are implicatiuelie permitted: This reason is of no force, for in that they be enemies to all, and doe spare no man, they ought not to protect themselves by that which is the Law of all men. The question is not what may bee done vnto them, and how manie haue dealt with them, but how by rigor of Law and strict reason they ought to be dealt with. To dispute of Law, is to dispute of a bonde whereby we are bound, but wee are not bounde to such. He bringeth likewise for prooffe the saying of *Caesar*: Should it not bee lawfull for Citizens to send embassadours to their fellow citizens: when the same hath been permitted to roagues and theefes haunting the wilde woodes of the Pyrenean mountaines<sup>m</sup>. But this maketh nothing to his purpose: for *Caesar* doth not there directly affirme that it was lawfull, but he spake it rather to bring the Pompeian faction into hatred, signifying that they did afforde the securitie of embassing to such lewde persons, whereas to their fellowe Citizens they did vterlie denie it: But heere difference

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rence must be held betwixt an absolute monarch  
 which taketh pray or spoyle vppon the seas, and  
 dominions of other princes, and these which  
 bee pirates without all colour of iustice: there-  
 fore the Pirats answere to *Alexander* is misliked,<sup>n</sup> when he said boldly, *That because he did robbe on*  
*the seas with one small pinnesse, therefore hee was ac-*  
*compted a pirate: but because Alexander did the same*  
*with many great gallies, therefore he was rearm'd the*  
*Gouernor of a fleet*<sup>o</sup>: howbeit this saying of the  
 pirate seemeth to be commended by *Cicero*<sup>p</sup>: and  
 to *S. Augustine*<sup>q</sup> it seemeth to haue beene spoken  
 truely and eloquently, which is very straunge, vn-  
 lesse they did accompt *Alexander* a robber, whom  
 some doubt not to call so<sup>r</sup>: and *Alciat* also is de-  
 ceiu'd, which not onely alloweth the said speech  
 of the pirate, but euen piracie it selfe<sup>s</sup>, because for-  
 sooth pirates are tollerated of some princes, and  
 there were some nations which did publicly pra-  
 ctise and put in vre that course of life. The Nor-  
 manes (saith *P. Emilius*) as antiquaries doe thinke,  
 did reckon and repute piracie amongst laudable  
 things<sup>t</sup>: And *Alciat* reasoneth further, *That they*  
*offend lesse then others which do so spoile vpon the sea,*  
*where the law of nations onely is of force and no other*  
*law: for* (saith he) *by that law the sea is common.* This  
 manner of discourfing becommeth not *Alciat*:  
 but regard is to bee had, whether *hee* that before  
 was a robber do afterward become a lawful & iust  
 captaine, which *Iustine* affirmeth of *Aristonicus*<sup>u</sup>:

<sup>n</sup> n) Alberic.  
 Gentil. lib. 1.  
 de iur. bel. c. 4.

<sup>o</sup> o) Cicero. 3. de  
 repub.  
<sup>p</sup> p) Ibid.  
<sup>q</sup> q) August. l. 4.  
 de ciuit. dei.

<sup>r</sup> r) Luc. 10. Se-  
 nec. 1. de be-  
 nefic.  
<sup>s</sup> s) Alci. 1.  
 Conf. 1.

<sup>t</sup> t) p. Emil. lib.  
 3. Franc.

<sup>u</sup> u) Iustini. lib 35

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- p) Plin. lib. 18. neare vnto him<sup>p</sup>, beeing better minded then Achab to Naboth, to whom he said: *Damih i vini-*  
c. 6.  
q) 3. Reg. 21. *am quæ appropinquat domui meæ*<sup>q</sup>: But against such the prophet *Esay* pronounceth a woe: *Væ qui coniungit is agrum agro, et domum domui*<sup>r</sup>: But because these things are plaine, they neede no further discourse.

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*That the rules of Warre and Law of Nations are not to be obserued and kept with Pyrates, Rebels, Robbers, Traytors, Reuoltes, and Vsurpers.*



- Ith Pyrates, Rebels, Robbers, Traytors, and Reuoltes, the Law of Armes is not to be obserued and kept: for they by offending haue not withdrawne themselves from publique iurisdiction<sup>c</sup>: for by offending a man may not bee said to be of more price, or of greater libertie, then he was before<sup>d</sup>, and for an other reason they may not claime aduantage by the Law of Armes, because that Law springeth from the Law of Nations,
- c) Bald. 3. cons. 96.  
d) Paulus l. 63. ad leg. Falc.

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tions, and such persons may not enioie the benefit of that Law to which they are enemies : Luce: 1. 24. 5.  
 To these men which haue withdrawne themselves from the communion and societie of men : and as *Florus* sayth<sup>e</sup>, haue broken the c) Flor. lib. 3.  
 league of mankind ; how can the Law of Nations, which is nothing else but the communion and league of Nations, extend anie fauour.  
 Pyrates ( as *Plinie* saith ) are enemies to all men lyuing : and therefore *Cicero* sayth, that if thou doest not bring to Robbers or Pyrates the raun-  
 some which thou hast promised for thy life, there is neither offence, nor fraudulent dealing :  
 no though thou hast promised with an oath<sup>f</sup>. f) Plin. lib. 2. c. 46. Cicer. pro leg. manil. et 3. de offic.  
*Spartacus* that notable roague did moue *Crassus* to contract a league with him : But he was with indignation reiected<sup>g</sup>. *Tacfarinas* that famous robber of *Affrike* grew to such height of arrogancie, that he sent Embassadors to *Tiberius* the Emperour : but his armie was sharpe against him and said, that *Tacfarinas* dealt verie reprochfully with him, because hee being no better then a robber by highwaies, did notwithstanding so deale with him, as if hee had beene a publique or iust enemy<sup>h</sup>. g) Appi. in Mithrid. et 1. ciuil. h) Tacit. Annal. 3.  
 Warre hath neuer been  
 as *Heliodorus* well obserueth, compounded or determined by articles or leagues with such dissolute persons, but either they haue ouercome, and so suruiued, or els haue been ouercome,

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i) Heliod. lib. 7.  
 4) Albericus  
 Gentil. lib.  
 1. de iur. bell.  
 c. 4.

D) Hotom. 7.  
 vlt. quaest.

m) Caesar. lib.  
 3. de bel. ciuil.

and so haue beene put to death <sup>i</sup>: Therefore  
 some <sup>k</sup> doe woonder that *D. Hotoman* dare af-  
 firme that the Law of Nations doth extende  
 to fugitiues and robbers <sup>l</sup>: and his first reason is,  
 because there is no Law which doth interdict or  
 forbid to couenant or contract with them: and  
 such thinges as are not verballie forbidden, are  
 implicatiuelie permitted: This reason is of no  
 force, for in that they be enemies to all, and doe  
 spare no man, they ought not to protect them-  
 selues by that which is the Law of all men. The  
 question is not what may bee done vnto them,  
 and how manie haue dealt with them, but how  
 by rigor of Law and strict reason they ought to  
 be dealt with. To dispute of Law, is to dispute  
 of a bonde whereby we are bound, but wee are  
 not bounde to such. He bringeth likewise for  
 prooffe the saying of *Caesar*: Should it not bee  
 lawfull for Citizens to send embassadours to  
 their fellow citizens: when the same hath been  
 permitted to roagues and theefes haunting the  
 wilde woodes of the Pyrenean mountaines <sup>m</sup>.  
 But this maketh nothing to his purpose: for  
*Caesar* doth not there directly affirme that it was  
 lawfull, but he spake it rather to bring the Pom-  
 peian faction into hatred, signifying that they  
 did afforde the securitie of embassing to such  
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 zens they did vtterlie denie it: But heere diffe-  
 rence

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rence must be held betwixt an absolute monarch  
 which taketh pray or spoyle vppon the seas, and  
 dominions of other princes, and these which  
 bee pirates without all colour of iustice: there-  
 fore the Pirats answer to *Alexander* is misliked, <sup>n) Alberic. Gentil, lib. 1. de iur, bel, c. 4.</sup>  
 when he said boldly, *That because he did robbe on  
 the seas with one small pinnesse, therefore hee was ac-  
 compred a pirate: but because Alexander did the same  
 with many great gallies, therefore he was rearmd the  
 Gouvernor of a fleet* <sup>o) Cicero. 3. de repub.</sup>: howbeit this saying of the  
 pirate seemeth to be commended by *Cicero* <sup>p) Ibid.</sup>: and  
 to *S. Augustine* <sup>q) August. l. 4. de ciuit. dei.</sup> it seemeth to haue beene spoken  
 truly and eloquently, which is very straunge, vn-  
 lesse they did accompt *Alexander* a robber, whom  
 some doubt not to call so <sup>r) Luc. 10. Scenec. l. de benefici.</sup>: and *Alciar* also is de-  
 ceiued, which not onely alloweth the said speech  
 of the pirate, but euen piracie it selfe <sup>s) Alci. 1. Conf. 1.</sup>, because for-  
 sooth pirates are tollerated of some princes, and  
 there were some nations which did publicly pra-  
 ctise and put in vre that course of life. The Nor-  
 manes (saith *P. Emilius*) as antiquaries doe thinke,  
 did reckon and repute piracie amongst laudable  
 things: And *Alciar* reasoneth further, *That they  
 offend lesse then others which do so spoile vpon the sea,  
 where the law of nations onely is of force and no other  
 law: for* (saith he) *by that law the sea is common.* This  
 manner of discourfing becommeth not *Alciar*:  
 but regard is to bee had, whether *hee* that before  
 was a robber do afterward become a lawful & iust  
 captaine, which *Iustine* affirmeth of *Aristonicus* <sup>t) p. Emil. lib. 3. Franc.</sup>: <sup>u) Iustini lib 35</sup>

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x) Frontin.  
lib. 2. c. 3.

y) Appian. lib.  
1. & 4. beller.  
civil.

z) Herodias. l. 1.

*Frontinus* of *Viriallius* <sup>x</sup>: and *Appian* of *Spartacus*: of *Apuleius* who was proscribed, and of *Sextus Pompeius* <sup>y</sup>: which is not so much effected by the leuying of a great armie, or the increase of the same, as these writers and other historians <sup>z</sup> seeme to think, but by the enioying of a good and sound title, and by the maintaining of a publike cause: for when *Viriallius* being before a robber did employ himselfe wholie for the defence of the libertie of his country he became a iust captaine, and may well be said to haue borne lawfull armes: for which cause the Romans did conclude peace and league with him, and did likewise call him their friend: So *Arfaces* whilest he fought to winne the crown of the kingdome of *Parthia*, being his cuntry from the Macedonians, was when he had committed many robberies & pillages, highted a lawfull king: and *Aristonicus* whilest hee claimed the kingdome of *Asia* by right of bloud and course of succession, might well be tearmed a gouernor in war and thought to haue pursued that contenti- on which is commonly called war. And so it may be noted that God himselfe would that *Sampson* should not moue against the Philistines without cause, but so did bring to passe that from priuate occasions he should as it were by degrees ascend to a publike quarrel <sup>a</sup>: but they which ground not their wars vpon a publike cause are not properly enemies though they haue armes, and do terme themselues gouernors, & though they encounter such

a) Iudic. 14.

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such as be lawful gouernors, and haue vnder their regiment a complete armie of soldiers: he is properly an enemy which hath a court or a commonweale, a treasure, & power to make league, peace and truce. And *Charles Martelle* did say of the Saracens that they could not therefore cleane themselves from the fault of robbers because they went in great troopes, & because they had capitaines, & tentes, and ensignes <sup>b</sup>, sithence they had no iust cause of war which is the only warrant of bearing armes <sup>c</sup>: What shall then be said of these French men which were taken in the Portugall warre of the Spaniards, and were not vsed as iust enemies: the soldiers I meane of *Don Antonio* were handled as pirates: yet the very historie doth conuince that they were not pirats: for they did shew forth their kinges letters, the king of *France* his letters whom they did serue, & not *Don Antonio* though for him they did fight <sup>d</sup>: but they which haue beene subiect to others, & are recoiled from their loyaltie of lieges becomming rebels, let them beware how they send embassadors to him from whō they haue reuolted. But it cannot be discerned by the law of nations which *Phillip* late king of *Spaine* did to certaine Flemings which came to him as embassadors, though they were neuer vnder his leageance or subiection, their estates hauing bin free frō time immemorial, as al histories of account do with clear voice pronouce: And *Dionysius* did impriso the embassadors of the *Siracusanes*, because that city hauing driuen the tirant into his tower

b) P. Emil. li. 2.

c) Ceph. consil. 620.

d) Connest. l. 9

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e) Plutarch.  
in Dio.

f) Buch. in lib.  
de re. Scot.

g) Amm. li. 21

h) Alber. Gen-  
til. l. 2. de le-  
gat. c. 7.

tower did set themselves at libertie<sup>e</sup>: but *Buchan-  
man* seemeth to erre, which compareth two iust  
princes, nay such as himself confesseth to be most  
iust<sup>e</sup>, namely *Hiero* of *Siracuse*, and *Cosimo Medi-  
ces* Duke of *Tuscana*, to two great theeues which  
did iustly diuide the pray, & did rule well though  
they came vniustly by it: for how was *Cosimo* a  
robber, if hee did vndertake the gouernement of  
that citie which did willingly offer vnto him the  
gouernment, he shold perhaps haue suffered it to  
be subdued by some forreigne Lord: or els haue  
left the regiment to others who would haue ha-  
zarded that ship vpon rocks and tempests, where-  
as that excellent man knew well how to keepe the  
ship in the hauen: but it seemeth that the law of  
armes is not bee kept to an vsurper: and therefore  
*Constance* the Emperour could not iustly bee re-  
proued if hee had punished these embassadors,  
which *Iulianus* being consoorted with him in the  
Empire by the French armie did send vnto him,  
as he threatned hee would, for both *Iulianus* and  
the armie were rebels<sup>g</sup>. But this is to bee vnder-  
stood onely of such rebelles and such vsurpers as  
haue beene sometimes in subiection, and vnder  
the leigeance of some absolute Monarch: for they  
which doe onely breake league or friendship, or  
ancient entercourse, are not to bee excluded from  
the right and benefit of embassage<sup>h</sup>: for how of-  
ten did the Volsicians, Latines, Spaniards, and ma-  
ny others reuolt from the Romanes, and yet sent  
embassa-

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embassadors to them without hurt or fear of danger<sup>i</sup>: they may lawfully claime the right of embassage, because they had and enioyed it before their reuolt, but otherwise it is of subiects, because they had it not so, neither is it reason that they should gaine any new right, or haue any aduantage by their crime or offence.

<sup>i</sup>) Lini. lib. 5.  
6. 29. &c. &  
Appi. lib. 1 de  
bel. ciuil.

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*That by the law and practise of nations, warre is not to be maintained against infidels, onely because they are infidels, and that princes in their realmes may inflict punishment for straunge worships.*



**I**F religion be of that nature, that no man ought against his will to be compelled vnto it by force of armes; and that be tearmed a new and vnusuall preaching which exacteth

faith by blowes: then it followeth that such war<sup>a)</sup> is not iust<sup>a</sup>. It is a point of irreligiousnes (faith Tertullian) to forbidde the opinion conceiued of

the deitie, and that is shall not be lawfull for mee to worship whom I would, but I shall be constrained to

worship whom I would not<sup>b</sup>: Faith is to be perswaded, not to be enforced (faith Barnard)<sup>c</sup>: And Hilarie

faith, that by a newe example men are compelled by

<sup>a)</sup> c. 35. 23. q. 5.  
c. 1. 3. disti.  
45. c. 3. de  
bapt.

<sup>b)</sup> Tertul.  
Apolog. et ad  
Scap.

<sup>c)</sup> Barn. cantic.  
ser. 66.

Z

armes

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d) Erasmi, pref. Hill. *armes to beleue*<sup>d</sup>. So *Lactantius* saith, that religion must be established by words, not by swords<sup>f</sup>: & so *Arnobius* saith to his aduersaries: *Because ye can do much by force and weapons, doe ye therefore thinke that ye do exceed vs in the knowledge of the truth* &? Ye haue heard authors, now heare reasons. That which is against the nature of a thing cannot tend to the effecting or preserving of that thing, but to the destroying of it: That which standeth by his owne strength is not to bee vpheld by other supporters. This opinion of not mouing armes for religion, *Franciscus a Victoria* a verie learned man, affirmeth to bee allowed of all writers none exempted: therefore he saith that this could bee no iust cause to his countrimen the Spaniardes to maintaine warre against the Indians. And *Didacus a Couarrunua* a Spaniard likewise & a learned Lawier<sup>i</sup>, doth vouch many Canonistes and Diuines which doe teach the same. *Baldus* also affirmeth, that it is not lawful to wage battell against infidels liuing with vs in peace, and not being iniurious vnto vs<sup>k</sup>: yet *Didacus* saith, that *Aquinas* is of a contrarie opinion<sup>l</sup>. And the fathers of the council of *Toletum* did make a decree touching the afflicting of hereticks by warre, which is recorded in the cannon lawe<sup>m</sup>. And *Barnard* mouing *Le-wis* king of *Fraunce* against *Asia* saith: *Can any war seeme more iust to the then that which is most holy.* The *Lacedemonians* also amongst other obiections made this a cause of their warre amongst the Athenian

h) Victor.  
relect.

i) Couaren, reg.  
pre. §. 10.

k) Bald. lib. 5.  
de iustit.

l) Couar. vbi  
supr.

m) c. 3. de her.  
c. 5. dist. 45.

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Athenians, and said that they were prophaners of religion : and the Athenians did on the contrarie parte charge the Lacedemonians with this, that they did drawe them that yeelded themselues out of the temples, and killed them <sup>a</sup>. But surely such pretenses are but colorus of auarice and crueltie, for there is no religion so barbarous, which moueth vs to slay men of a contrarie religion <sup>o</sup>. King *Ferdinand* entituled the Catholike, did couer all his dishonest desires with the vail of religion, as *Guicchiardine* noteth <sup>p</sup>. And *Charles* the Emperor the nephew of *Ferdinand* did not garnish his ambitious enterprises with any other colour <sup>q</sup>. But the warres of the French and other people of *Europe* which did relieue the Christians vexed of the Turkes, and reuenging the iniuries done to Christ haue beene liked & allowed of <sup>r</sup> : but that is an other question of defensiu war, which without all doubt is lawfull, if it be maintained by them that may vndertake the defence lawfully. But now the question is whether only by pretence of religion war may be vndertaken, and this hath bin denied, and the reason is, <sup>t</sup> for that the cause of religion is not betwixt man & man, but betwixt man and God: neither is the right of any man preiudiced for a diuers religion, because the bond of religion is onely to God : & it is a law betwixt God and man. But here wee doe not speake of such, which are altogether voide of religion, and liue rather the life of beastes then of men. For they like pirates, the common and dayly enemies of

<sup>n</sup>) Thuc. lib. 2.

<sup>o</sup>) Na. Co. li. 1.

<sup>p</sup>) Guicci. li. 12.

<sup>q</sup>) Iou. lib. 30.

<sup>r</sup>) Couar. reg. pecc. §. co.

<sup>t</sup>) Alber. Gentill. lib. 1. de iur. bel. c. 9.

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all men are to be pursued by war, & to be brought by armes into compasse, and to the order of ciuill conuersation. For they may iustly seeme to bee iniurious to all men which in the bodies of men carie the appetites of beastes, yea most sauage beastes: for that there is some sparke of religion in some kindes of brutish creatures, hath bene deliuered and belieued. These are they which fight with God after the manner of the Giants, which is as much to say as to resist nature, for religion is parcell of the law of nature <sup>a</sup>. And (as *Cicero* saith, there is no nation which haue not some religion <sup>b</sup>: for though many nations follow not a good religion, yet there are few voide of all religion. <sup>c</sup> Where *Agathias* said, that the Almaines wer worthy of pittie though idolaters. Therefore such are to be suffered and to be taught, not to be compelled & exterminated: and many ciuilians haue answered in the point, that the Iewes were not to bee molested nor enforced to the faith, though they sithence Christes doctrine reuealed vnto them differre nothing from Idolaters. Now let vs consider whether warre and sword ought to be assayed against such as despised the religion receiued in a Citie or commonweale: but doubtlesse they which haue vsed strange worship haue bin in all commoweales seuerely punished. *Plato* against such awarded a capitall punishment <sup>d</sup>: the ciuill lawes haue made diuers punishments <sup>e</sup>: for this cause *Socrates* is killed at *Athens*: *Diagoras* is proscribed

a) Calvin. li. 1.  
institut.

b) Cicero. lib. 1.  
de nat. deor.

c) Baldus. 1.  
conf. 316.

d) Plat. 10. de  
legi.

e) Iust. 1.  
Apol.

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proscribed, and some in other places be punished, <sup>f) Ioseph. 1.</sup> slaine <sup>f</sup>. *Anacharsis* was slaine of his countrymen: <sup>App. Cicer. 2.</sup> the *Thracians* for his greekish rites, which he did <sup>de natur. deor.</sup> vse being returned out of Greece <sup>Plut. Nic.</sup> <sup>h) Herodot. 4.</sup>. And *Tiberius* was hote against externall ceremonies, and against the *Egyptian* and *Iewish* rites. And *Augustus* did vse the accustomed religion, and did not tollerate anie new <sup>i) Sueton. 93.</sup>. And so *Mecenas* did <sup>Dio. 53. 54.</sup> counsaile *Augustus* to punish such as brought in new or foreine religion: because they drewe manie into conspiracie, and to other inconueniences, verie preiudiciall to a Monarchie <sup>k) Dio. lib. 52.</sup>. And some Princes for the same cause doe mislike the doctrine of *Luther* <sup>l) Guicc. 13.</sup>. But other Princes which <sup>20.</sup> hearken to *Luther* are of a contrarie minde. Surely such religion as distroyeth the government of common weales and Monarchies, is not to be suffered <sup>m) Ælia. lib. 9.</sup>: But if the religion be good and do not hurt Princes, they that withstand it are like the stubberne *Persians* which resisted *Daniell* <sup>n) Dan. 6.</sup>. But some perhaps will saie, that diuersitie of religion hindreth the societie of men, as contrariwise the vnitie thereof doth preserue it, which *Philo* speaketh of his cuntrymen the *Jewes* <sup>o) Phil. de for.</sup>. And others haue said that by the difference of religion and sectes, and by the distance of life and maners hatred and seditions arise, by which euils, cities often do perish. All diuersitie of religion dissolueth government as *Cardanus* thinketh <sup>p) Card. 3. de sap.</sup>. And a *moderne politian* doth earnestlie auouch the

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- q) Lips. in po- same <sup>a</sup>. Wherefore *Procopius* saith, that *Christi-*  
lit. *ans* by disputing subtiltie of their Faith, and con-  
tending amongst themselues, doe stir vp sedi-  
tion <sup>r</sup>. And an other historian addeth: *If at anie*  
r) *Procop. 3.* *time conuouersie doe arise of Faith, parents do not*  
Goth. *onely dissent from their children, but the husband*  
*from the wife in seditious manner* <sup>t</sup>. *Valensinian* and  
f) *Nic. Call.* *Gratian* both famous Princes, doe denie vnto *Va-*  
17. *Histor. 7.* *lens* neare vnto them in bloude, aide and succour  
for this diuersitie of Religion <sup>e</sup>: and added fur-  
ther, that it was not iust nor godlie to helpe an  
vngodlie man, and to enter into a societie with an  
enemie of God, a professed Arrian. And vpon  
that reason *Iustinian* the Emperour mooueth the  
*French* against the *Gothes*, because they also were  
Arrians <sup>m</sup>. All which come to this summe, that the  
Princes cause may seeme iust, who suffereth one  
Religion, and which maintaineth it by punish-  
ments. Yet some are of an other minde, that  
force is not to be vsed against them which em-  
brace a contrarie Religion: but they temper their  
opinion with this caution: *Nisi quid detrimenti il-*  
*linc respub. capiat. Vnlesse the common weale may re-*  
*ceiue some dammage thereby* <sup>n</sup>. And therefore *Au-*  
gustus is reported to haue fauoured the syna-  
gogues of the *Jewes*, because to him they seemed  
not *Bacchanals* or conuenticles made for distur-  
bing peace, but the schooles of vertue <sup>o</sup>: for many  
times vnlawfull assemblies be vnder pretence of  
Religion <sup>p</sup>, which are neuer without daunger, and  
haue
- n) Alber. Gen. lib. 1. de iur. bel. c. 10.
- o) Phil. de legati.
- p) L. 2. de extra. or. l. 1. de coll.

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haue alwaies been forbidden<sup>q</sup>: But when it is apparant that such meetings are not made of euill intent, the prohibitiue Law ceaseth<sup>r</sup>. And there is an Epistle of the Emperour *Marcus* extant, forbidding *Christians* to be troubled, vnlesse they were conuicted to haue attempted some thing against the common weale, and if nothing were objected vnto them but diuersitie of Religion. And *Alexander Seuerus* did allowe the priuiledges of the Iewes, and did tollerate Christians. And *Traian* did before commande, that the Christians should inioy their libertie being instructed by *Plynie* of their innocencie<sup>f</sup>. Euen in *S. Peters Church* at *Rome* the Easterne people and the *Aethiopians* doe offer sacrifice after their maner, & are mainteined at the Popes charge<sup>f</sup>. The *Lutheranes* are permitted to haue their publique exercise in all the principalities and dominions of the house of *Austrich* in *Germanie*. But diuers Religions are not permitted of the *Lutherane* Princes: though *Bellarmin* affirmeth it, but of the *Papistes* which is denied by him<sup>t</sup>. One Religion onlie is not professed in the citie of *Augusta*, of *Ratisbona*, of *Frankford*, and other free Cities of *Germanie* In such sort liue the *Polonians*, the *Heluetsians*, the *Rhetians*, and thou either deceiuest vs, or els art deceiued *Iustus Lipsius*<sup>u</sup>, which denieth that there is but one Religion in any one principalitie of *Germanie*. There is indeed but one suffered of the *Lutherane* Princes, & this is true, notwithstanding *Bellarmins* premised  
asser-

q) Mant. in orat. pro Sext. & Alc. pro Cornel

r) Alciat. 5. consil. 107. Launpr. Plin. vltim. epistol. 103. 104. Euseb. 3. 27. 33. Tertul. apol.

f) Ioni. lib. 18.

t) Bellarm. 5. cont. lib. 3. c. 19. et 18.

u) Lipf. de vna relig.

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assertion : But of the Princes of *Austria* not onlie the religion of *Luther* is tolerated, but euen the heresie of the *Anabaptistes*. And whereas *Bellarmin* saith, that three onelie Emperors did permit diuers religions : namelie *Ioninian*, who was reprooued by *Synode* : *Valens* who was an *Arian* : and *Julianus* who was an *Apostata*. Surelie there is none of sound iudgement but will agree with him in this, that Princes ought principallie to regarde the vnitie of Religion, as a thing most pleasing vnto God : who hath said by his holie Apostle *Ephesi. 4. vers. 5. 6* *Vnus Domini: una fides: unum baptisma: unus Deus et pater omnium* <sup>uu</sup> : If God, Faith, and Baptisme in generall, and *quocunque modo* would haue serued, *Paule* who in his heauenlie Epistles vseth not one word superfluous, would not haue said *unus, una, unum* : would not haue vrged it, would not haue exacted it, would not haue cried for it. Yet I would not haue weapons and armes to stir vp warre for Religion onelie, if rebellion or disloialtie be not mixed with it: For heresies may be punished, and yet *citra bellum*, without warre. Let *Lipsius* therefore be silent, who saith that it is necessarie to contend by weapons, whilest some goe about to preferre their religion before other some : or else saith he, it will be no religion, which is cold and calme. To this warlike note & hote humor, which argueth his want of pollicie, and that he is neither wise as a serpent, nor simple and milde as a doue.

It may

uu) εις Κόρινθ,  
αὐτὰ νῦν εἰς  
βαλτιμονά.

uu) Trismeg.  
de nat. deo.  
Dio lib. 42.

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It may be aunswered that warres for Religion are onelie there to be tolerated, where there is no religion at all, or where subiectes pretende religion as a cause of their rebellion, not where there is diuersitie of religion. Nay it is no religion which is hurt to the slaughter of Citizens and subiectes, and the desolation of kingdomes or countries. Are not the *Ægyptians* to be laughed at, which with mutuall warres and woundes did afflict themselves, for a monstrous and absurde religion on both sides<sup>uu</sup>: For it appeareth by *Diodorus Siculus*, that the diuersitie of Religions was to this purpose brought into *Ægypt*, that the people might disagree amongst themselves, and so haue no leasure nor opportunitie to conspire against their king<sup>x</sup>. The *Ægyptians* (saith one<sup>a</sup>) are by nature wont of little sparkes to raise great flames: For the *Ægyptians* as others report of them, are men vnconstant, raging, proude, iniurious, desirous of nouelties, and willing to chaunge a present state wish an erroneous libertie<sup>b</sup>: And therefore it was well considered by *Augustus* and *Tiberius* Emperours, that no Senator, that is, no noble nor mightie man should gouerne *Ægypt*, or should goe into *Egypt*<sup>c</sup>. But that Princes may commaunde the due obseruation and practise of Religion, according as God infourmeth their consciences by the rules of his sacred worde, and the instruction of his true teaching

<sup>uu</sup>) Trismeg.  
de nar. deo.  
Dio lib. 42.

<sup>x</sup>) Diodor. Sicul. lib. 2.  
<sup>a</sup>) Phil. de 1e.

<sup>b</sup>) Vopisc.  
Dio 39. 42.

<sup>c</sup>) Tacit. annual. 2.

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ching spirite, in their Realmes, dominions, and  
 kingdomes, wherein they haue absolute power,  
 and may with seuerer punishments correct the  
 frowardnes of men addicted to straunge wor-  
 shippes, may by the vnited practise of all com-  
 mon weales be conuincd. A king saith *Aristo-  
 tle* in auncient time was the Gouvernor in warres,  
 the Ruler in iudgements, the maintenour of Re-  
 ligion<sup>d</sup>. This hath been obserued of the *Assiri-  
 ans, Persians, Medes, Iewes, Gracians, Romanes,*  
 and all other the most eminent Nations of the  
 world<sup>e</sup>. And so it is reported in Scripture of  
*Asa*, that he tooke away the altars of the strange  
 Gods, and the high places, and brake downe  
 the Images, and cut downe the groues, and com-  
 maunded *Judah* to seek the Lord God of their fa-  
 thers, & took away out of all the cities of *Juda* the  
 high places, and images; therefore the kingdome  
 was quiet before him<sup>f</sup>. And *Iustinian* the Empe-  
 rour speakech imperiously: *We command* (saith he)  
*the blessed Archbishops of Rome, Constantinople, Alex-  
 andria, Theopolis, and Ierusalem, to receiue for ordi-  
 ning and installing of Bishops, onely that which this  
 present law doth allow<sup>g</sup>. Archadius setteth downe*  
 both law & punishment in some cases of religion.  
 If any Bishop refuse to communicate with *Theo-  
 philus, Atticus, and Prophyrius*, he shall lose both his  
 Church and his goodes: if any that beare office,  
they

d) Politic. lib.  
3. c. 11. et 5.

e) Iustin.  
Procop.  
Cursius.  
Varro.

D. August. 3. 4.  
5. et 6. de ciuit.  
dei.

f) 2. Chronic.  
24.

g) Nouel.  
constit. 123.

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they shall forfeit their dignitie: hee shall lose his seruice: if any of the common people, let them be fined and exiled<sup>h</sup>. I will not insist longer vpon a matter plaine, but will cut off these lines to auoid rediounes.

h) Nicephor.  
li. 13. c. 30.  
Sozome, lib. 8.  
c. 24.

## FINIS.

<i>Faultes.</i>	<i>Leaf.</i>	<i>Corrections.</i>
Agree	fol. 4. a.	disagree
ar	fol. 6. b.	is
prescribe	9. b.	proscribe
<i>Dominus</i>	13. b.	<i>dominus</i>
soundly	20. b.	fondly
and	21. b.	one
<i>Acontius</i>	24. a.	<i>Acontius</i>
repeated	24. b.	reprooued
at leste	38. b.	at least
<i>Clusius</i>	38. b.	<i>Clusius</i>
<i>Victoria</i>	41. a.	<i>Victori</i>
<i>Batari</i>	42. b.	<i>Batari</i>
farelet	43. a.	forcelet
repelit	44. b.	repetit
<i>Latium</i>	54. b.	<i>Latium</i>
indice	54. b.	indice
conuay	64. a.	courage
cibicall	64. b.	ciuicall
<i>Fulminea</i>	77. b.	<i>Fulminea</i>
<i>Cleonymus</i>	77. b.	<i>Cleonymus</i>
<i>ipfus</i>	81. a.	<i>ipfus</i>
<i>Viriathus</i>	83. b.	<i>Viriathus</i>
discerned	84. a.	defended
( There want these wordes)	90. a.	if any souldier.